

REPORTABLE (03)

**(1) MINISTER OF LANDS, AGRICULTURE, FISHERIES, WATER
AND RURAL DEVELOPMENT (2) REGISTRAR OF DEEDS**

v

(1) ALISTAIR MICHAEL FLETCHER (2) ROBERT NJANJI

**SUPREME COURT OF ZIMBABWE
GWAUNZA DCJ, MAVANGIRA JA & CHIWESHE JA
BULAWAYO, 22 & 15 JANUARY 2023**

L. T Muradzikwa, for the appellants

G.R.J Sithole with B. Masamvu, for the first respondent

No appearance for the second respondent

**Judgment No. SC 03/24
Civil Appeal No. SCB 49/23**

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MAVANGIRA JA

1. This is an appeal against the decision of the High Court ('the court *a quo*') which ordered the second appellant to cancel caveat 844/2000; ZN caveat 26/2017 and caveat 77/2019 endorsed on Deed of Transfer 3188/83.
2. After considering the evidence and the submissions made by counsel, the court issued an order in the following terms:
 - "1. The appeal be and is hereby allowed with costs.
 2. The judgment of the court *a quo* be and is hereby set aside and substituted with the following:
 - "i. The preliminary point on jurisdiction be and is hereby upheld with costs.
 - ii. The court declines jurisdiction to hear this matter."

3. A request has been made for the court's reasons for the quoted order. The reasons follow hereunder.

BACKGROUND FACTS

4. The first respondent is the occupier of a certain immovable property being Umguza Agricultural Lots of Umvutcha and Reigate registered under title deed 3188/83. On 25 August 2000, the land was listed in the Gazette Extraordinary under General Notice 405 of 2000. Pursuant to the gazetting of the land, the first appellant caused caveats 844/2000 and 77/2019 to be endorsed on the deed of transfer. Caveat XN 26/2017 was further endorsed on the title deed at the instance of the second appellant.
5. On 15 January 2009, the first respondent approached the High Court under HC 2291/08. The court granted an Order declaring that his land was not subject to any act of acquisition or resettlement by the first appellant or any other person or persons acting under the instructions of the first appellant. It also ordered that the portion of the land held under the deed of transfer 740/95 in the name of Paul Medley and occupied by virtue of an agreement of lease by the second applicant therein, one Troy Robert Maidwell (who is not a party in this matter), was not subject to any act of acquisition or resettlement by the first appellant or "by any person or persons acting under the instructions of authority" (sic) of the first respondent.
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6. The High Court also declared that the appellant was, in respect of the land referred to in paras 4 and 5 above, "estopped from doing or carrying out any act connected with the subdivision or acquisition of the said land." The first appellant was also ordered to immediately desist from any further act of demarcation of the said portions of land.

7. On 1 December, 2022, the first respondent approached the court *a quo* with an application for the upliftment of Caveats 844/2000, XN 26/2017 and 77/2019 placed on his title deeds by the second appellant under the instructions of the first appellant and also of the second respondent. In his founding affidavit, the first respondent averred that the caveats were unwarranted as they had no lawful basis. He stated that the second appellant maliciously and unlawfully caused a caveat to be placed on his property. Pursuant to the placing of the said caveat 77/2019, the first appellant had been sending people to view and survey his property. The first respondent averred that the unwarranted caveats were interfering with his “constitutional right of enjoying my (“his”) property rights.” Further, that the first appellant had no legal standing to justify the caveats as they had been nullified by the court order under HC 2291/08.
8. The first respondent also contended that if not lifted, the caveats would greatly prejudice him as he would not be able to transfer title without the approval of the caveator in circumstances where there was in existence, an order that estopped the first appellant or any other person acting on the first appellant’s instructions, from interfering with the land held under the deed of transfer 3188/83.
9. The first appellant raised a preliminary objection to the effect that the court *a quo* lacked jurisdiction to deal with the matter. He averred that s 2 (3) of the Constitutional Amendment (No.17) Act of 2005 prohibited any person having interest in the land from applying to a court to challenge any of its acquisition. He contended that this approach was “confirmed in sections 72 (3) and (4) of the Constitutional Amendment (No.20) Act, 2021.” He also averred that Schedule 7 was inserted into the former (1980) Constitution by s 16B of Constitutional Amendment (No. 17) Act of 2005.

10. On the merits, the first appellant averred that the judgment which the first respondent alleged to have cancelled or nullified the caveats did not mention the caveats on the land or their fate. He also averred that the first respondent no longer had real ownership rights over the farm because the farm now formed part of state agricultural land under schedule 7 of the Constitution, which the court had no jurisdiction to preside over.
11. The second respondent appeared in court and submitted that Caveat XN 26/2017 was endorsed on the deed of transfer 3188/83 in error. He conceded that it had to be cancelled. His being cited in this appeal would be because he was a party in the proceedings *a quo*. However, he has not participated in this appeal.

FINDINGS BY THE COURT A QUO.

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12. In determining the preliminary objection on jurisdiction raised by the appellants, the court *a quo* found that the jurisdiction of the courts of law has been ousted from any case in which a challenge to the acquisition of agricultural land secured in terms of s 16B (2) (a) of the former Constitution of Zimbabwe, 1980 is raised. The court however went on to note that the matter before it was not a challenge to the acquisition of agricultural land as envisaged in the *Mike Campbell (Pvt) Ltd & Ors v Minister of National Security Responsible for Land, Land Reform and Resettlement & Anor* SC 49/07 case. It found that the case before it was about the cancellation of caveats endorsed on the deed of transfer of the first respondent's property.
13. The court further noted that the law does not take away the right of a litigant in the position of the first respondent to seek a remedy against what it considers an unlawful

endorsing of caveats on his property. The court further found that the first respondent was not challenging the acquisition but was challenging the placing of caveats on his property. The contention that the cancellation of the caveats would have the effect of reversing the acquisition of the first respondent's land was found to be not persuasive. The court thus found the preliminary objection on jurisdiction raised by the first appellant to be without merit.

14. On the merits of the application, the court *a quo* found that the appellants did not challenge the existence of the court order in HC 2291/08. It found that the argument by the first appellant that the order in HC 2291/08 *per* NDOU J was a *brutum fulmen* was not persuasive as our jurisprudence does not permit a litigant to choose to ignore a court order on the basis that it is a *brutum fulmen*. It also noted that the whole argument advanced by the appellants was that the order in HC 2291/08 was wrongly made. With regard to this argument, the court *a quo* found that it was not up to it to vary or alter or declare invalid an order of a judge of parallel jurisdiction as it had no such competence.
15. The court *a quo* also found that the order of the High Court was still extant and that it was therefore binding unless overturned on appeal or through rescission proceedings. The court opined that it could not simply ignore the said order of the High Court. It thus found that the existence of caveats 844/2000 and 77/2019 was not supported by law. This was so as the order of the High Court in HC 2291/08 declared that land held under deed of transfer 3188/83 was not subject to any act of acquisition or resettlement. The court thus ruled that the first appellant had no caveatable interest over the property.

16. In the result, the second appellant was ordered to cancel the Caveats 844/2000, ZN Caveat 26/2017 and Caveat 77/2019 endorsed on the first respondent's title deed.
17. Aggrieved by the decision of the court *a quo*, the appellants have approached this court on the following grounds of appeal.
1. The court *a quo* erred and grossly misdirected itself on a point of law by dismissing the appellant's preliminary point that this Court had no jurisdiction to adjudicate this matter at all as the farm was listed under schedule 7 of the Constitution hence its title vests in the state.
 2. The court *a quo* misdirected itself by cancelling the caveats which had been endorsed on the 1st respondent's title deed No. 3188/83 under caveats 844/2000, ZN caveat 26/2017 and caveat 99/2019. The effect of the cancellation would have reversed the acquisition of the appellant's land from the state which cannot be done by a court of law.

DETERMINATION OF PRELIMINARY POINT RAISED BEFORE THIS COURT

18. At the hearing of the appeal, counsel for the first respondent raised a preliminary point to the effect that the relief sought was fatally defective in that in the relief that they sought, the appellants did not state how the matter should proceed in the event that the appeal was allowed and the judgment of the court *a quo* set aside. In making this point counsel argued that the appellants ought to have stated the substituted order which would be granted by this Court in the event that the appeal is allowed.
19. In opposing the preliminary point, counsel for the appellants argued that the relief sought, as crafted, was exact and precise in that once the appeal was allowed and the order of the court *a quo* is set aside, it would automatically follow that the court *a quo* would have refused to exercise jurisdiction in the matter and as such there was no need for a substitutive order in this regard.

The relief sought by the appellants is couched as follows:

“FURTHER TAKE NOTICE that appellants pray for the following relief:

1. That the appeal succeeds with costs.
2. The judgment of the court *a quo* is set aside and substituted with the following:

“The preliminary point taken by the appellants be and is hereby upheld.”

20. Rule 37 (1) of the Supreme Court Rules, 2018 is a mandatory rule which provides for the form of a notice of appeal. Rule 37 (1) (e) specifically provides that a notice of appeal shall state the exact relief sought. In *Bonde v National Foods Limited & Ors* SC 11/21 at para 19, GUVAVA JA commented as follows on the meaning of the term ‘exact nature of the relief sought’:

“The phrase ‘exact nature of the relief sought’ means that an appellant must inform the Court of the relief that he/she wants. The Supreme Court’s mandate is to examine the correctness or otherwise of a decision of the lower court. In doing so the court is guided by the relief sought by the appellant. The need for the relief sought on appeal to be exact cannot be over emphasised.”

In this regard, see also *Sambaza v AL Shams Global BV Limited* SC 5/18 and *Mudyavanhu v Saruchera & Ors* SC 75/17.

21. What this means is that the relief sought before this Court must communicate clearly what redress an appellant seeks. The relief must also be one which this Court can grant and must be an enforceable order. The main consideration at the end of the day is that the relief must be clear and must inform as to whether it translates into a confirmation or correction or variation of the decision appealed against. In this case we find that the relief sought by the appellant is clear and exact. If the relief as sought is granted, it will mean that once the appeal is allowed, the judgment of the court *a quo* is set aside and substituted with an order that the preliminary point is upheld by the court *a quo*. It naturally follows that the lower court would have declined jurisdiction to deal with the matter. It may be accepted that another paragraph could have been added to the

substituted order to categorically state that the court (*a quo*) declines jurisdiction to hear the matter. We however found that the absence of such a paragraph does not, **on the facts and in the circumstances of this matter**, detract from the clarity and exactness of the relief sought. We found that the second respondent will suffer no prejudice from the manner in which the relief is crafted. We therefore found no merit in the preliminary point raised by counsel for the second respondent and we accordingly dismissed it.

THE APPELLANTS' SUBMISSIONS ON THE MERITS

22. Mr *Muradzikwa*, for the appellants, argued that the court *a quo* had no jurisdiction to deal with the application for the upliftment of the caveats. He argued that in terms of section 16B of the former Constitution of Zimbabwe, all land that was gazetted and itemized in Schedule 7 of the Constitution, was considered as State land. Counsel further argued that the land in question was gazetted in 2000 and again in 2008 and was then listed under Schedule 7 of the Constitution. He submitted that any challenge to the gazetting of the land had to be done by way of amendment of the Constitution. Further, that the court *a quo* erred in removing the caveats as the effect of such act was to reverse the acquisition of the land.

23. Counsel argued that the gazetting of the land, when it was done, was not challenged and neither was the acquisition. He argued that *Commercial Farmers Union v The Minister of Agriculture, Land and Rural Resettlement and Others* 2010 (2) ZLR 576 overrides all and any orders to the contrary and as such the order of the High Court, per NDOU J in HC 2291/08, on which the first respondent based its claim to the land, had been overtaken by events. Counsel argued that the judgment of NDOU J had therefore become a *brutum fulmen*.

THE FIRST RESPONDENT’S SUBMISSIONS

24. Mr *Sithole*, for the first respondent argued that section 16B of the Constitution dealt with land acquired for agricultural purposes only. Counsel conceded that there could be no challenge to agricultural land acquired by the State as per the decision in the *Commercial Farmers Union v The Minister of Agriculture, Land and Rural Resettlement and Others* (*supra*). He however argued that where the land in dispute was not agricultural land then such acquisition could be challenged. Counsel further argued that the land in dispute had already been proclaimed under S.I 212 of 1992 as land within the boundaries of the City of Bulawayo and that such land formed part of Bulawayo City Council land and could not be regarded as agricultural land. He maintained that the acquisition was done in error.

ISSUE FOR DETERMINATION

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26. One issue arises for determination from the two grounds of appeal and the submissions made by counsel before this Court. The issue is:

Whether or not the court a quo had jurisdiction to deal with the matter.

ANALYSIS

26. The appellants’ bone of contention as discernible from their grounds of appeal and from the submissions made before the Court is that the court *a quo* grossly misdirected itself on a point of law by dismissing the appellant’s preliminary point. The said preliminary point was to the effect that the court *a quo* had no jurisdiction to adjudicate the matter at all as the farm was listed under schedule 7 of the Constitution and the title thereto thus vested in the State.

27. In finding that it had jurisdiction to deal with the matter, the court *a quo* found that the matter before it was not one of acquisition of land but of the cancellation of caveats that had been registered against the property in issue, by the first appellant.
28. The court also took into account the judgment handed down by the High Court in HC 2291/08 per NDOU J which it considered to be extant. However, the appellants' view was that after the appellant's land had been gazetted it automatically became State land by operation of the law and that the judgment by NDOU J had been rendered a *brutum fulmen*. The appellants also contended that by virtue of s 16B of the former Constitution, the jurisdiction of the courts in respect of disputes arising out of acquisition of land was ousted and that the court *a quo* therefore lacked the requisite jurisdiction to deal with the application for the upliftment of the caveats.

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29. In his opposing papers in the court *a quo* the first appellant (as first respondent) stated as follows:

“... (T) His Honourable Court has no jurisdiction to adjudicate this matter. .. The s16B of Constitutional Amendment (No. 17) Act of 2005 inserts Schedule 7 into the 1980 Constitution of Zimbabwe to the effect that all the farms listed on General Notices published in the Gazette or Gazette Extraordinary prior to the 8th of July 2005 were acquired and vested in the State.

Section 2 (3) of the Amendment prohibited any person having interest in the land from applying to a court to challenge any of the acquisition. This approach is confirmed in sections 72 (3) and 72 (4) of the Constitution Amendment (No. 20) Act, 2021.”

Further reference is made to the cases of *Mike Campbell (Pvt) Ltd & Ors v Minister of National Security Responsible for Land, Land Reform and Resettlement & Anor* 2008 (1) ZLR 17 (S) p43 F-G to 44A and *Naval Phase Farming (Pvt) Ltd and Ors v Minister of Lands and Rural Resettlement and Anor* SC50/18 wherein both courts confirm and reiterate that s 16B of the former Constitution effectively ousts the power of courts to adjudicate issues relating to acquired state land under schedule 7.”

He further averred that:

“In the present case, the Applicant’s former properties under title deed 3188/83 were acquired and listed in the Gazette Extraordinary on 25 August 2000 ... which is a copy of the Gazette Extraordinary under general notice (sic) 405 of 2000. The General Notice referred (to) falls under Schedule 7 of the Constitution.”

30. The first respondent’s contention as articulated in its answering affidavit was that “*The provisions of sections 72 (3) and subsection 4 of the same section of the Constitution Amendment (No. 20) Act, 2021 are not denied. I however am not challenging the acquisition of my land for it was in the first place not subject to any act of acquisition or resettlement. Subsections (3) and (4) of section 72 of the Constitution do not affect my application. This is so as the court order granted in 2009 clearly states that the land held under title deeds (sic) 3188/83, deeds of transfer registered in my name are not subject to any act of acquisition or resettlement. I am neither seeking compensation as it is one of the actions prohibited by the sections cited by the first Respondent. In the present case, the properties held under title deed 3188/83 are still mine. The court order stopped any acts connected with the acquisition of my land. My right to claim any action over property under title deed 3188/83 hasn’t been taken over by any operation of law.*”

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31. The High Court order in HC 2291/08 was handed down on 15 January 2009. This is a date that followed after the dates of the gazetting of the first respondent’s land in 2000 and also in 2008. The listings of the first respondent’s land in the gazettes indicated that the land had been acquired by the State. After having been acquired by the State, the first respondent ceased to be the lawful owner of the land and any dispute arising over the acquisition of the land was to be settled through the provisions of s 16B of the former Constitution. This Court in *Campbell & Anor v The Minister of National Security Responsible for Land Reform and Resettlement & Anor* SC 49/07 at p 36, had an

opportunity to interpret the import of s 16B of the Constitution of Zimbabwe, Amendment (No. 17), 2005 as follows:-

“By the clear and unambiguous language of s 16B (3) of the Constitution the Legislature, in proper exercise of its powers, has ousted the jurisdiction of courts of law from any of the cases in which a challenge to the acquisition of agricultural land secured in terms of s 16B(2)(a) of the Constitution could have been sought. The right to protection of law for the enforcement of the right to fair compensation in case of breach by the acquiring authority of the obligation to pay compensation has not been taken away. The ouster provision is limited, in effect, to providing protection from judicial process to the acquisition of agricultural land identified in a notice published in the Gazette in terms of s 16B (2) (a). An acquisition of the land referred to in s 16B (2) (a) would be a lawful acquisition. **By a fundamental law the Legislature has unquestionably said that such an acquisition shall not be challenged in any court of law. There cannot be any clearer language by which the jurisdiction of the courts is excluded.**” (the emphasis is added)

32. The sentiments expressed in the *Mike Campbell* case (*supra*) were equally applied in the case of *Commercial Farmers Union v Minister of Lands and Rural Resettlement* (*supra*) wherein this Court interpreted s 16B (3) of the Constitution as **Judgment No. SC 03/24, Civil Appeal No. SCB 49/23** 12 ~~ousting the jurisdiction of~~ the courts to enquire into the legality or otherwise of the acquisition of land in terms of s 16B (2) (a) of the Constitution. Section 16B of the former Constitution inserted schedule 7 into the 1980 Constitution to the effect that all of the farms listed on General Notices published in the Gazette prior to 8 July 2005 were acquired and vested in the State. The first respondent’s farm was acquired by the State as listed in the Gazette Extraordinary on 25 August 2000. It was also listed in the gazette for the second time in 2008

33. It naturally followed that the first respondent had no legal cause or justification to be aggrieved by the caveats placed over land which had been acquired by the State. He had no legal cause to justify any approach to the courts for the redress of the nature that he sought before the court *a quo*. The caveats registered against the title deeds are caveats

that relate to the State's land and not the appellant's land. The first respondent's right to lay any claim over the property or to have the caveats registered over the title deed of the property cancelled was overtaken and extinguished by the law once the land was gazetted. Conversely, the court had no jurisdiction to entertain the first respondent's application.

34. After s 16B had been interpreted by the Court in the *Commercial Farmers Union* case (*supra*), the judgment of NDOU J was effectively rendered a *brutum fulmen* hence the first respondent could not have relied on it as an extant judgment defining his rights over the land. In any event, the judgment by NDOU J was handed down in January 2009 when the court had ceased to have jurisdiction as clearly enunciated in the *Campbell* and *Commercial Farmers Union* cases (*supra*). The court *a quo* fell into error in not taking into account the provisions of s 16B (5) of the former constitution which provided that

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“(5) Any inconsistency between anything contained in—

(a) a noticed itemised in Schedule 7; or

(b) a notice relating to land referred to in subsection (2)(a)(ii) or (iii); and the title deed to which it refers or is intended to refer, and **any error whatsoever** contained in such notice, shall not affect the operation of subsection (2)(a) or invalidate the vesting of title in the State in terms of that provision.” (the emphasis is added)

35. In *TBIC Investments (Pvt) Ltd & Ors v The Minister of Lands and Rural Development & Ors* 2018 (1) ZLR 137 at 141G – 142C, BHUNU JA stated:

“In order to protect and keep the land reform programme on course, Parliament in its wisdom amended the former Constitution. The intention of the legislature was to automatically validate the acquisition of all agricultural land identified and listed under schedule 7 for purposes of the land reform programme on or before 8 July 2005 regardless of any errors or mistakes that may otherwise have nullified the acquisition in the normal run of things.”

The disputed land was acquired under the former Constitution, of which s 16B (2) as amended provides as follows:

- (1) Notwithstanding anything contained in this Chapter –
- (a) all agricultural land –
- (i) that was identified on or before the 8th July 2005, in the Gazette or the Gazette Extraordinary under the proviso to section 5(1) of the Land Acquisition Act [Chapter 20:10], and which is itemized in the Seventh Schedule, being agricultural land required for resettlement purposes ...
- (ii) ...
- (iii) ...
- is acquired by and is vested in the State with full title therein with effect from the appointed day...
- (5) Any inconsistency between anything contained in –
- (a) a notice itemized in schedule 7; or
- (b) a notice relating to land referred to in subsection (2)(a)(ii) or (iii);

And the title deed to which it refers or is intended to refer, and any error whatsoever contained in such notice, shall not affect the operation of subsection (2)(a) or invalidate the vesting of title in the State in terms of that provision.”

36. The learned Judge of Appeal proceeded to interpret the section by stating, *inter alia*, at **Judgment No. SC 03/24**
142D – E as follows: **Civil Appeal No. SCB 49/23**

“The effect of the above section (s 16B (5)) was to revive, resuscitate and validate the acquisition of all identified agricultural land listed in the 7th schedule for resettlement purposes prior to 8 July 2005 **regardless of any errors or withdrawals in the acquisition process. No limitation has been imposed on the acquisition process once the land is shown to have been gazetted and listed in the 7th schedule prior to 8 July 2005.**

The language used in s 16B (5) of the former constitution is clear and unambiguous admitting no ambivalent interpretation. The only meaning to be ascribed to the section is that **once land is gazetted and listed in schedule 7 it automatically stands acquired by the State with full title by operation of law.** The mere fact that the notice was at one time withdrawn or expired is irrelevant.” (the emphasis is added)

He proceeded at 142G:

“Once the land had been identified and itemised under schedule 7, title to the land automatically vested in the State with the result that **it automatically became State property by operation of law. In consequence whereof the previous owner was divested of his title to the land and stripped of all rights of ownership to the acquired land thereto.**” (the emphasis is added)

37. For the sake of completeness paras (ii) and (iii) of s 16B (2) of the former Constitution provide as follows:

“(ii) That is identified after the 8th July, 2005, but before the appointed day, in the Gazette or Gazette Extraordinary under section 5(1) of the Land Acquisition Act [Chapter 20:10], and which is itemised in Schedule 7, being agricultural land required for resettlement purposes; or

(iii) That is identified in terms of this section by the acquiring authority after the appointed day in the Gazette or Gazette Extraordinary for whatever purpose, including, but not limited to –

A. settlement for agricultural or other purposes; or

B. the purposes of land reorganisation, forestry. Environmental conservation or the utilisation of wild life or other natural resources; or

C. the relocation of persons dispossessed in consequence of the utilisation of land for a purpose referred to in subparagraph A or B;”

38. The first respondent was thus mistaken when he described the **Judgments No. SC 03/24** **Civil Appeal No. SCB 49/23** because it became State land upon it being identified and listed or itemised in Schedule 7.

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The court was thus in agreement with Mr *Muradzikwa* in his submission articulated in the following manner:

“The effect of a Schedule 7 listing is that the acquisition of the farm cannot be reversed by any application to a court of law. The only method to delist the farm is an amendment of schedule 7 to the Constitution. ... The respondents went on to challenge the acquisition of the farm via the back door by mounting an application for upliftment of caveats in complete violation of the Constitution which provides that an acquisition cannot be challenged in a court of law. The only remedy which the law provides following an acquisition is an application for compensation for improvements effected on the land prior to its acquisition in terms of the Constitution or in terms of SI 62/2020.”

39. The fact that the respondent later on had a court order against the acquiring authority is irrelevant. That order is *brutum fulmen*. It is incapable of being implemented. Once the land under title deed 3188/83 was identified and itemised under the 7th Schedule, “title to

the land automatically vested in the State with the result that it became State property by operation of law.” The acquisition was validated “regardless of any errors or withdrawals in the acquisition process.”

40. In the *CFU* case (supra), CHIDYAUSIKU CJ put it as follows at p 12 of the judgment:

“In the face of the clear language of s 16B (3) of the Constitution, a litigant can only approach the courts for a review and for a remedy relating to compensation.”

Further, at p 27 he said:

“In conclusion. I would summarise the legal position as follows -

(1) Former owners and/or occupiers whose land has been acquired by the acquiring authority in terms of s 16B (2) (a) of the Constitution cannot challenge the legality of such acquisition in a court of law. The jurisdiction of the courts has been ousted by s 16B (3) (a) of the Constitution. See also the *Mike Campbell* case supra.”

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41. The argument by counsel for the second respondent that the land in dispute had already been proclaimed under S.I 212 of 1992 as land within the boundaries of the City of Bulawayo and that such land formed part of Bulawayo City Council land, falls away on the basis of the above authority. In the face of s 16B of the former Constitution and the subsequent promulgation of the Land Acquisition Act [*Chapter 20:10*], reference to S.I. 212 of 1992 cannot be and is of no avail to first respondent. The Constitution and the statute prevail over the Statutory Instrument. The Statutory Instrument cannot and does not override the Constitution and the statute.

42. In any event, the S.I. that the court has been able to find is titled:

“Statutory Instrument 212 of 1992.
Control of Goods (Rice Prices) (Amendment) Order, 1992 (No. 4)”

The first respondent may have erroneously cited the wrong S.I. number, but even if he did and there is in existence a Statutory Instrument that says what he alleges it to say, on the basis of the above analysis, it does not save the first respondent's case.

43. The court *a quo* simply ignored the fact that the dispute before it was in relation to acquired land hence its jurisdiction had been ousted by virtue of s 16B.
44. The fact that the court *a quo* lacked jurisdiction to deal with the matter has been further confirmed by the incorporation of s 72 (3) and (4) of the new Constitution of Zimbabwe, 2013 which provide as follows:

“(3) Where agricultural land, or any right or interest in such land, is compulsorily acquired for a purpose referred to in subsection (2)-

- (a) Subject to section 295 (1) and (2), no compensation is payable in respect of its acquisition, except for improvements effected on it before its acquisition;
- (b) No person may apply to court for the determination of any question relating to compensation, except for compensation for improvements effected on the land before its acquisition, and no court may entertain any such application; and
- (c) The acquisition may not be challenged on the ground that it was discriminatory in contravention of section 56.

(4) All agricultural land which-

- (a) Was itemised in Schedule 7 to the former Constitution; or
- (b) Before the effective date, was identified in terms of section 16B(2) (a)(ii) or (iii) of the former Constitution;

continues to be vested in the State, and no compensation is payable in respect of its acquisition except for improvements effected on it before its acquisition.” (the emphasis is added.)

45. Until or unless the Constitution has been amended to allow the first respondent to approach the courts for redress, the courts have no jurisdiction to entertain any disputes relating to acquired land. The Court found merit in the arguments and contentions

presented by the appellants' counsel to the effect that the court *a quo* lacked jurisdiction to hear the matter.

DISPOSITION

46. The court *a quo* fell into error when it failed to consider that the first respondent's land was gazetted land and hence it constituted State land. The court erroneously found that it had jurisdiction to deal with the matter and failed to take into account that the jurisdiction of the courts in relation to matters relating to the acquisition of land was ousted by s 16B of the former Constitution. The judgment of the High Court in HC 2291/08 fell away once s 16B (5) was enacted and the court *a quo* fell into error in not taking this into account. By applying for the cancellation of the caveats, the first respondent acted on the premise that he was the landowner of the land held under title deed 3188/83. He was not, because as at that stage title to the land already vested in the State. The court *a quo*, as would have been the case with any other court, thus had no jurisdiction to entertain the first respondent's application, premised as it was on the basis that the land in issue was his property. It was not. The court *a quo*'s view that the judgment or order in HC 2291/08 was still in existence was thus also erroneous.

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47. It is on this basis that this Court found that the appeal was meritorious and proceeded to issue the order reproduced in para 2 above.

GWAUNZA DCJ : I agree

CHIWESHE JA : I agree

Civil Division of the Attorney General's Office, appellant's legal practitioners

Messrs. Masamvu & Da Silva- Gustavo Law Chambers, first respondent's legal practitioners

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