

**ALISTAIR MICHAEL FLETCHER**

**Versus**

**THE MINISTER OF LANDS, AGRICULTURE FISHERIES, WATER AND RURAL DEVELOPMENT**

**And**

**ROBERT NJANJI**

**And**

**REGISTRAR OF DEEDS**

IN THE HIGH COURT OF ZIMBABWE  
DUBE-BANDA J  
BULAWAYO 30 May 2023 & 8 June 2023

**Opposed court application**

*B. Masamvu*, for the applicant  
*L.T. Muradzikwa*, for 1<sup>st</sup> and 3<sup>rd</sup> respondents  
2<sup>nd</sup> respondent in person

**DUBE-BANDA J:**

[1] This is an application for the upliftment of caveats placed, at the instance of the first and second respondent, on the applicant's deed of transfer. The applicant seeks an order that the third respondent be directed to uplift and cancel the caveats placed on its property.

[2] The common cause facts, upon which the suit is founded, are these: the properties held by the applicant under title deed 3188/83 known as Umuza Agricultural Lots of Umvutcha and Reigate, were acquired and listed in the Zimbabwe Government Gazette Extraordinary published on 25 August 2000. Subsequent to the Gazetting of the properties, the first respondent caused Caveats 844/2000 and 77/2019 to be endorsed on the deed of transfer 3188/83. XN 26/2017 was endorsed at the instance of the second respondent.

[3] This court in *Alister Michael Fletcher & Troy Robert Maidwell v The Minister of Lands, Agriculture and Rural Resettlement* HC 2291/08, at the instance of the applicant, on 15 January 2009 granted an order couched in the following terms:

It is ordered that:

- i. It is declared that land held under title deeds / deed of transfer set out in the schedule and registered in the name of the first applicant and are (*sic*) not subject to any act of acquisition or resettlement by the first respondent or by any other person or persons acting under the instructions of authority of the respondent.
- ii. It is further ordered that the portion of 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 is not subject to any act of acquisition or resettlement by the first respondent or by any other person or persons acting under the instructions of authority of the respondent.
- iii. It is accordingly further declared that the respondent is estopped from doing or carrying out any act connected with the subdivisions or acquisition of the said land described in paragraph 1 and 2 herein including, but not limited to, the demarcation of plots, the erecting of beacons, the cutting of lines or removal of fences or the allocation of all the portions of the said land to any person or persons.
- iv. The respondent is ordered to immediately desist from any further acts of demarcation of the said portions of land described in paragraphs 1 and 2 herein and is ordered to immediately remove all the marks and to take all steps to remove from the said land by a virtue of an (*sic*) verbal or written instructions or purported authority granted him.

#### The Schedule

- i. (Deed of transfer 740/95) subdivision E of Umvutcha registered in the name of Paul Medley.
- ii. (Deed of transfer 3188/83) Lots 9, 10, 16 and 17 Umguza Agricultural Lots of Umvutcha and Reigate.
- iii. (Deed of transfer) 3188/83 Subdivision D of the remainder of Umvutcha.
- iv. (Deed of transfer 3188/83) Lot 2 of Umguza Agricultural Lots of Umvutcha.
- v. (Deed of transfer 3188/83) Lots 3 of Umguza Agricultural Lots of Umvutcha.
- vi. Mopane
- vii. Upper Nondwene
- viii. Other areas

#### Service of documents

In terms of the Rules of Court or by registered post delivered to the respondent's head office in Harare.

Costs

That there be no order as to costs save in the event that the respondent files notice of opposition whereupon the respondent pay the costs of this application.

[4] The applicant is seeking the cancellation of these caveats, contending that the first and second respondents have no lawful cause to endorse caveats on his property. The second respondent appeared in court and made the point that XN 26/2017 was endorsed on the deed of transfer 3188/83 in error, and conceded that it be cancelled. Other than resisting the relief sought on the merits, the first respondent on the papers took three preliminary points, *viz* the first was that it was cited improperly in its personal capacity; the second is that the respondent had cited a non-existent first respondent; and the third being that this court has no jurisdiction to adjudicate this matter. At the commencement of the hearing Mr *Muradzikwa* Counsel for the first respondent abandoned the first two preliminary points and persisted with the objection based on lack of jurisdiction. Mr *Masamvu* Counsel for the applicant abandoned the preliminary point taken on the papers, *viz* that the first respondent's notice of opposition is not properly before court.

[5] I informed counsel that I shall adopt a holistic approach to avoid a piece-meal treatment of the matter wherein the preliminary points are argued together with the merits, but when the court retires to consider the matter, it may dispose of the matter solely on preliminary points despite that they were argued together with the merits. I now turn to the preliminary point, *viz* jurisdiction.

[6] The first respondent contends *in limine* that this court has no jurisdiction to adjudicate this matter, in that property held under deed of transfer 3188/83 is gazetted land acquired by the State. The first respondent's Counsel relied on the following cases: *Mike Campbell (Pvt) Ltd & Ors v Minister of National Security Responsible for Land, Land Reform and Resettlement & Anor* 2008 (1) ZLR 17; where the court said:

By the clear and unambiguous language of s 16B (3) of the Constitution the Legislature, in the 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.

[7] It is now trite law in this jurisdiction that the jurisdiction of courts of law have 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 Constitution is sought. However, this case is not about 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* case (*supra*). This case is about the cancellation of caveats endorsed on the deed of transfer of the applicant's property. And it is anchored on an order of this court declaring that land held under deed of transfer 3188/83 is not subject to any act of acquisition or resettlement.

[8] The law does not take away the right of a litigant in the position of the applicant to seek a remedy against what it considers an unlawful endorsing of caveats on its property. The applicant is not challenging the acquisition, he is challenging the placing of caveats on his property. See: *Kershelmar Farms Pvt Ltd & Ors v Mswelangubo Farm Pvt Ltd & Ors* HB 280/21. The contention that the cancellation of the caveats will have an effect of reversing the acquisition of applicant's land is not persuasive. I say so because this court in *Alister Michael Fletcher & Troy Robert Maidwell v The Minister of Lands, Agriculture and Rural Resettlement* (*supra*) declared that land held under deed of transfer 3188/83 was not subject to any act of acquisition or resettlement. That order is extant.

[9] The preliminary point that this court lacks jurisdiction to determine this matter is without merit and is refused.

[10] Regarding the merits, which arguments were in substance also challenging the jurisdiction of the court to hear this matter, Mr *Muradzikwa* did not challenge the existence of the court order in *Alister Michael Fletcher & Troy Robert Maidwell v The Minister of Lands, Agriculture and Rural Resettlement* (*supra*). Counsel argued that it is a *brutum fulmen*, in that it purports to deal with gazetted property which is beyond the jurisdiction of the courts. I am not persuaded by this argument. Our jurisprudence does not permit a litigant to choose to ignore a court order

on the basis that it is a *brutum fulmen*. I have not been referred to any authority to support the contention that the jurisprudential terrain has shifted to permit a litigant to ignore a court order on the basis that it thinks it is a *brutum fulmen*.

[11] The whole thrust of the argument advanced by Mr *Muradzikwa* seems to point to an assertion that in his view the court order in *Alister Michael Fletcher & Troy Robert Maidwell v The Minister of Lands, Agriculture and Rural Resettlement* HC 2291/08 was wrongly made. As a judge of the High Court, it is not up to me to vary or alter, or declare invalid an order of a judge of parallel jurisdiction. See: *Unitrack (Private) Limited v Telone (Private) Limited* SC 10/18. I have no competence to even say an order by a judge of parallel jurisdiction is wrong.

[10] The court order is extant, and it is binding unless overturned on appeal or through rescission proceedings. It has not. In *Manning v Manning* 1986(2) ZLR 1 (SC) the court said an order of a court of unlimited jurisdiction must stand until it is set aside. That it is the plain and unqualified obligation of every person against whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged.

[11] In *Mauritius and Another v Versapak Holdings (Private) Limited and Another* SC 2 / 2022 the court said:

It is trite that once a court has made an order it binds all and sundry concerned. Everyone bound by the court order has a duty to obey the order as it is until it has been lawfully altered or discharged by a court of competent jurisdiction or statute. In *Hadkinson v Hadkinson* ROMER LJ recited the duty to obey court orders with remarkable clarity when he said:

It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of the obligation is shown by the fact that it even extends to where the person affected believes it to be irregular or even void

[12] If a court order is not set aside on appeal or rescinded on application it cannot simply be ignored, that could be a fatal blow to the rule of law. Respecting court orders is a core foundation of our legal system. An important founding value of the Constitution of Zimbabwe is the rule of law. Derived from this founding value is the principle of legality, which is an

incident of the rule of law, and one of the controls through which the power of this court is regulated by law. It requires that extant orders of courts of unlimited jurisdiction be complied with. Certainty in the administration of justice is another principle of the rule of law. Litigants place reliance on extant orders of courts and arrange their affairs around them, with the expectation that they will be complied with. If a court order could simply be disregarded without the need for a process to pronounce on its validity that could lead to chaos and a fatal blow to the rule of law. It just cannot be countenanced.

[13] Regarding the caveat XN 26/2017 the second respondent conceded that it was endorsed on the applicant's deed of transfer 3188/83 in error. In respect of Caveats 844/2000 and 77/2019 their existence is not supported by the law. I say so because the court order in *Alister Michael Fletcher & Troy Robert Maidwell v The Minister of Lands, Agriculture and Rural Resettlement (supra)* declared that land held under deed of transfer 3188/83 was not subject to any act of acquisition or resettlement. The order is extant. The fact that Caveat 844/2000 was endorsed prior to the court is of no consequence. The submission that the applicant has no property, as the property is now vested in the State, negates the effect of the court order, and it is of no moment. As a rule, the order is extant and has effect in law. It cannot just be disregarded. The first respondent has no caveatable interest over the property. It is for these reasons that this application must succeed.

[14] What remains to be considered is the question of costs. The general rule is that in the ordinary course, costs follow the result. I am unable to find any circumstances which persuade me to depart from this rule. Accordingly, the first respondent must pay the applicant's costs.

In the result, it is ordered as follows:

- i. The third respondent is and hereby ordered to cancel the Caveats 844/2000; ZN Caveat 26/2017; and Caveat 77/2019 endorsed on deed of transfer 3188/83.
- ii. The first respondent to pay the applicant's costs of suit on a party and party scale.

*Masamvu & Da Silver-Gustavo Law Chambers*, applicant's legal practitioners  
*Civil Division of the Attorney General's Office*, 1<sup>st</sup> and 3<sup>rd</sup> respondents' legal practitioners