

REPORTABLE (5)

DOUGLAS STUART TAYLOR-FREEME

v

(1) THE SENIOR MAGISTRATE, CHINHOYI

(2) THE ATTORNEY-GENERAL

**CONSTITUTIONAL COURT OF ZIMBABWE
CHIDYAUSIKU CJ, MALABA DCJ, ZIYAMBI JA, GARWE JA & CHEDA AJA,
HARARE, JULY 07, 2011 & OCTOBER 8, 2014**

A P de Bourbon SC, for the applicant

No appearance for the first respondent

T R Zvekare, for the second respondent

CHIDYAUSIKU CJ: This application is made in terms of s 24(1) of the former Constitution of Zimbabwe (hereinafter referred to as “the Constitution”), which provided:

“24 Enforcement of protective provisions

(1) If any person alleges that the Declaration of Rights has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may, subject to the provisions of subsection (3), apply to the Supreme Court for redress.”

The applicant alleges that his rights to protection of the law and a fair trial guaranteed under ss 18(1) and (2) of the Constitution were violated by the court *a quo*.

The facts of this case are that the applicant was charged with contravening s 3(2)(a), as read with ss 3(3) and 3(5), of the Gazetted Lands (Consequential Provisions) Act [Chapter 20:28] (hereinafter referred to as “the Act”), “using, or occupying gazetted land without lawful authority”, in that on 4 February 2007 and at Romsey Farm (hereinafter referred to as “the farm”) Chinhoyi, he, without lawful authority to occupy, hold or use gazetted land, did not cease to occupy, hold or use that land after the expiry of the forty-five day period stipulated in s 3(2)(a) of the Act and has not ceased to occupy, hold or use that land to date.

The applicant pleaded not guilty to the charge. The applicant’s defence is set out in the Defence Outline, in particular paras 4-6, which read as follows:

- “4. The accused does not own the farm and was not the former owner. The farm is occupied by an operating farming company.
5. The farm is not gazetted land. The listing of the farm for acquisition purposes has been declared to be unlawful by the Southern African Development Community Tribunal sitting at Windhoek, Namibia, and that ruling is binding on the Government of Zimbabwe and throughout Zimbabwe.
6. Since the accused does not occupy the land, there is no issue that he is under any legal obligation to cease occupation of the land.”

It was also the applicant’s defence that he had authority to occupy, hold or use the gazetted land from the late Vice President Msika and officials from the Ministry of Lands, Land Reform and Resettlement. As this is in contradiction to the stance that the applicant is not a former owner or occupier of the farm or gazetted land, I can only assume that this defence is in the alternative. In support of the alternative defence that the applicant has

lawful authority to use the gazetted land, he attached to the Defence Outline the following letters from the Office of the late Vice President Msika concerning the farm:

“4 July 2002

Mr D Tailor-Freeme (*sic*)
P O Box 7516
Chinhoyi

MESSRS TAILOR-FREEME (*sic*): REMAINDER OF ROMSEY AND ATHENS A FARM

Following your various consultations with the Vice President of Zimbabwe, the Honourable J W Msika, and mindful of the fact that you offered Slaughter Farm (1400 ha) to Government for resettlement purposes under the Zimbabwe Joint Resettlement Initiative (ZCRI), the Vice President grants you permission to continue farming the above farm.

O.E.M. Hove
Director (Policy and Planning)
Office of the Vice President and Cabinet

cc Hon P T Chanetsa
Governor/Resident Minister
Mashonaland West Province”;

And:

“11 December 2007

Hon. D.N.E. Mutasa (MP)
Minister of State for National Security,
Lands, Land Reform and Resettlement

ANOMALIES IN THE IMPLEMENTATION OF THE LAND REFORM AND RESETTLEMENT PROGRAMME: MASHONALAND WEST PROVINCE

I understand that you convened a meeting with the political leadership of Mashonaland West Province to discuss their representations contained in Cde Shamyarira’s letter dated 19 October 2007.

I wish to remind you that these issues had already been discussed by the Presidium and a decision had been taken to implement them without any variation. I also wish to remind you that you cannot alter or supersede any decision taken by the Presidium.

DR J.W. MSIKA (MP)
VICE PRESIDENT”

And:

“26 January 2009

The Provincial Governor and Resident Minister
Mashonaland West
Chinhoyi

Attention: The Hon. F. Chidarikire (MP)

Dear Sir

**FARMING OPERATIONS AT ROMSEY FARM, MAKONDE DISTRICT,
MASHONALAND WEST**

This letter serves to confirm that Mr D. S. Taylor-Freeme was granted lawful authority by the Hon. Vice President Dr J.W. Msika to continue with his farming operations on the above-mentioned farm.

You are therefore requested to hold any action to the contrary in abeyance until consultations can be held with the Hon. Vice President who comes back from his vacation leave on 19 February 2009. Your co-operation in the above regard will be greatly appreciated.

Yours faithfully

R T Madamombe
Permanent Secretary to the VP Dr J.W. Msika”.

The underlining is mine.

Given the contents of the above letters, which were in part addressed to the applicant personally, the applicant’s contention that he is not in occupation of or using the farm is untenable. The two contentions that the applicant is not in occupation of the farm and that he has authority to occupy the farm are mutually exclusive.

The matter proceeded to trial and the State led evidence from two State witnesses, namely Mr Gavanga and Mr Chikomba. These witnesses are officials in the Ministry of Lands and Rural Resettlement. They are responsible for the administration and

allocation of land in terms of the Act. Their evidence may briefly be summarised as follows

—

1. That they knew the applicant as a farmer on the farm, the gazetted land, which was acquired in terms of s 16B of the Constitution.
2. That the applicant was running farming operations on the farm before and after the acquisition of the farm.
3. That at the expiry of the forty-five day period when the applicant was required, in terms of s 3 of the Act, to vacate the farm he had crops on the farm that had yet to be harvested. They gave him time within which to complete the harvesting and vacate the farm.
4. That at the end of the harvest the applicant did not vacate the farm and is continuing farming operations on the farm to date.
5. That the farm has since been allocated to another person in terms of an offer letter but because the applicant is refusing to vacate the farm the new owner in terms of the offer letter has not been able to take occupation of the farm.
6. That although the registered owner of the farm is one Merle Taylor-Freeme, the mother of the applicant, they have always dealt with the applicant in connection with the farm and that it is the applicant who is carrying out farming operations on the farm.

The evidence of these witnesses is to a large extent corroborated by the correspondence attached to the defence outline, referred to above. It is significant to note that the correspondence is between the applicant in his personal capacity and Government officials. There is nothing in the correspondence that suggests that the applicant was acting on behalf of a company or some third party.

At the close of the State case, the applicant applied for a discharge. In his application for a discharge, the applicant submitted that none of the six essential elements of the offence charged had been proved or alleged to justify his being put on his defence. He submitted that for the applicant to be put on his defence the State had to lead evidence that *prima facie* establishes the following as the essential elements of the charge, that –

- (a) the accused was a former owner or occupier;
- (b) of gazetted or acquired land;
- (c) he has not ceased to occupy, hold or use that gazetted land;
- (d) after the expiry of the appropriate period referred to, which in the present case is forty-five days after the fixed date;
- (e) the accused as the former owner or occupier has no lawful authority to occupy, hold or use that land.

The applicant also pleaded invalidity of s 2 of the Act and mistake of law.

The application for a discharge was dismissed. In dismissing the application for a discharge, the learned trial magistrate concluded that the applicant had a case to answer and should be put on his defence.

Dissatisfied with that ruling, the applicant applied for a referral of the matter to the Constitutional Court in terms of s 24(2) of the Constitution, which provides as follows:

“24 Enforcement of protective provisions

(2) If in any proceedings in the High Court or in any court subordinate to the High Court any question arises as to the contravention of the Declaration of Rights, the person presiding in that court may, and if so requested by any party to the proceedings shall, refer the question to the Supreme Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.”

In the application for referral, the applicant contended that the trial court had violated his fundamental right to the protection of the law guaranteed by s 18(1) of the Constitution by putting him on his defence when the evidence for the State failed to establish the essential elements of the offence. The applicant also advanced the following two further grounds in support of the application for referral –

- (1) first, that the trial magistrate had violated the applicant’s right to a fair trial by failing to give detailed reasons for dismissing the applicant’s application for discharge. In particular, it was contended that the learned trial magistrate should have dealt with each of the six grounds that were advanced in support of the application for discharge, and that his failure to do so was a violation of the applicant’s right or entitlement to a fair trial in terms of s 18(2) of the Constitution.

- (2) second, that the definition of “lawful authority” in s 2 of the Act is *ultra vires* s 16B(6) of the Constitution insofar as it seeks to limit the meaning of “lawful authority” to an offer letter, a permit or a land settlement lease. The contention is that Parliament has no authority to truncate the definition of

“lawful authority” referred to in the Act without first amending s 16B(6) of the Constitution.

The court *a quo* dismissed the application for referral to the Constitutional Court as frivolous and vexatious.

The applicant now approaches this Court in terms of s 24(1) of the Constitution, on the basis that the court *a quo* violated his fundamental right by refusing to refer his case to this Court.

The applicant contends that the dismissal of his application for referral violated his right to protection of the law guaranteed by s 18(1) of the Constitution, and his right to a fair trial guaranteed by s 18(2) of the Constitution. He further argued that his application for referral was neither vexatious nor frivolous.

In essence the applicant’s case in this application is that –

- (a) the dismissal of the application for discharge constitutes a violation of his constitutional right to the protection of the law, in that the State had not established any one of the essential elements of the offence that he was being charged with;
- (b) the trial magistrate, by reason of his failure to give detailed reasons in his judgment for dismissing both applications, had violated the applicant’s right to a fair trial, the contention being that he should have addressed each of the six grounds that were advanced in support of the application for discharge before dismissing the application; and

- (c) the definition of “lawful authority” in s 2 of the Act was *ultra vires* s 16B(6) of the Constitution and was therefore unconstitutional.

The first issue that falls for determination by this Court is whether the court *a quo* was correct in dismissing the application for referral as frivolous and vexatious. If the court *a quo* was correct in dismissing the application for referral that is the end of the matter. If the court *a quo* erred in dismissing the application for referral, then this Court is at large to consider the issue of whether the applicant’s rights were violated.

The applicant’s contention that the definition of “lawful authority” in the Act is *ultra vires* the Constitution raises a constitutional issue. Once a constitutional issue arises in any proceedings in an inferior court, it should be referred to the Constitutional Court unless such an application is frivolous or vexatious. The contention that s 2 of the Act is *ultra vires* s 16B(6) of the Constitution is a constitutional issue that arose during the proceedings in the court *a quo*. This constitutional issue is neither frivolous nor vexatious. The court *a quo* was therefore required in terms of s 24(2) of the Constitution to refer this matter to the Constitutional Court. The court *a quo*’s failure to refer the constitutional issue raised to the Constitutional Court constitutes a violation of the applicant’s constitutional right to protection of the law guaranteed in terms of s 18(1) of the Constitution. Such violation entitles the applicant to approach the Constitutional Court in terms of s 24(1) of the Constitution.

I am therefore satisfied that this application is properly before this Court and this Court is at large to consider the constitutional issues raised in the application to this Court as if it were the court of first instance.

In this regard see *Martin v Attorney-General and Anor* 1993 (1) ZLR 153 (S) at pp 158H-159A, wherein the Court had this to say:

“For these reasons I am satisfied that the present application was correctly brought under s 24(1) of the Constitution. The order made by the magistrate was, in the particular circumstances, beyond his jurisdiction. This Court must now place itself in the position it would have been in had the magistrate, as he ought to have done, referred to it the question raised before him.”

I now turn to deal with the applicant’s contention that his constitutional rights have been violated as if this was the court of first instance.

The applicant’s main contention is that the State, at the close of its case, had not established any one of the essential elements of the offence of contravening s 3(2)(a), as read with ss 3(3) and 3(5), of the Act.

Placing an accused person on remand, trial or on his defence at the close of the State case, when the allegations and/or the evidence led by the State do not constitute an offence, is a violation of an accused person’s right to the protection of the law, guaranteed by s 18(1) of the Constitution. See the cases of *Martin v Attorney-General supra* and *Williams and Anor v Msipha N.O. and Ors* 2010 (1) ZLR 552 (S) at 572G-575G. Thus, *in casu* if the evidence led by the State does not establish *prima facie* any one of the six essential elements of the offence the applicant is entitled to the relief he seeks, the stay of prosecution.

The following are the essential elements of the offence the applicant is charged with –

- (a) the accused must be a former owner or occupier;
- (b) of gazetted land;

- (c) who has not ceased to occupy, hold or use that land;
- (d) after the expiry of the appropriate period referred to, which in the present case is forty-five days after the fixed date, being 4 February 2007; and
- (e) has no lawful authority to occupy or use that land.

The applicant also submitted that the State had to disprove the applicant's defence of a mistake of law.

I will deal with each essential element in turn -

Is The Applicant A Former Owner Or Occupier?

The evidence or facts placed before the trial court clearly establish that the applicant carried out farming operations on the farm in question before and after the farm was acquired in terms of s 16B of the Constitution. That evidence is clearly credible and is corroborated by the annexures attached to the applicant's defence outline. The evidence before the court *a quo* clearly establishes *prima facie*, at the very least, that the applicant is a former occupier of the farm.

Is the Farm Gazetted Land?

The evidence that the farm was acquired in terms of s 16B of the Constitution admits of no debate. The *Government Gazette Extraordinary* dated 22 February 2002, attached to the applicant's Defence Outline, clearly shows that the farm is one of those farms acquired by the State in terms of Constitution of Zimbabwe Amendment (No. 17) Act, 2005, which came into effect on 28 December 2006. Accordingly, the farm is indeed gazetted land and the evidence to that effect is beyond dispute. The submission that the acquisition is unlawful because it was declared unlawful by the SADC Tribunal flies in the face of this

Court's decision in *Commercial Farmers' Union and Ors v Minister of Lands and Rural Resettlement and Ors* SC 31/10. It is a mischievous submission not worthy of any further comment.

The Applicant's Failure To Cease To Occupy, Hold Or Use The Land

Again, the evidence of the two State witnesses is that the applicant used the land before its acquisition in terms of s 16B of the Constitution and is occupying and running farming operations on the farm to date. It is quite clear from this evidence that the applicant has not ceased to occupy, hold or use the farm. Again, the evidence that the applicant is still in occupation of the farm is overwhelming.

Is The Applicant In Occupation After The Expiry Of The Appropriate Period Referred To, Which In The Present Case Is Forty-Five Days After The Fixed Date, Being 4 February 2007?

As I have stated, the applicant, according to the evidence of the two State witnesses, is still occupying and running farming operations on the farm to date. Forty-five days have since expired. The applicant should have vacated the farm forty-five days after the date of the acquisition of the farm.

It was submitted that the applicant was permitted to complete his harvest and thus authorised to occupy the farm beyond the prescribed forty-five days, and thereafter the law does not prescribe the period to cease occupation beyond the extended period.

The submission that a former occupier, who is permitted to stay on gazetted land for a period beyond the forty-five days prescribed by the Act to enable such occupier to

complete harvesting, who overstays that permitted period does not contravene s 3 of the Act is puerile. It does not merit serious consideration. I shall revert to this submission when I deal with the issue of the definition of “lawful authority” later in this judgment.

Did The Applicant As Former Occupier Have Lawful Authority To Occupy, Hold Or Use That Land?

The applicant contends that the letters from the late Vice President Msika and from the Ministry of Lands, Land Reform and Resettlement are “lawful authority” entitling him to remain on the gazetted land. I am not persuaded by this argument. The letters from the late Vice President do not constitute “lawful authority” in terms of the Act. I shall deal with this submission in some detail when I deal with the issue of what constitutes “lawful authority” later in this judgment.

The Applicant’s Defence Of A Mistake Of Law

The applicant’s defence of a mistake of law is frivolous and vexatious. If the applicant was serious about this defence, he would have left the farm when he was charged. The fact that the applicant is still occupying the farm makes nonsense of this defence.

Is The Definition of “Lawful Authority” Contained In the Act *Ultra Vires* the Constitution?

In my view, the definition of “lawful authority” in s 2 of the Act is *intra vires* s 16B(6) of the Constitution. Again I propose to deal with this issue when I deal with the issue of the meaning to be ascribed to s 2 of the Act, which defines what constitutes “lawful authority”.

I am satisfied that at the close of the State case there was before the court enough evidence to put the applicant on his defence.

It was also the applicant's contention that the learned trial magistrate, in his reasons for judgment, did not deal with all the grounds that the applicant had raised in his application for discharge and that that constituted a violation of his right to a fair trial.

It is common cause that the learned trial magistrate did give reasons for the dismissal of the application for discharge. The reasons for discharge regrettably did not deal with the grounds of the application in any detail. However, the learned trial magistrate's conclusion that the applicant had a case to answer and should be put on his defence cannot be faulted. Although his failure to give detailed reasons for judgment amounts to a misdirection, the misdirection did not result in a substantial miscarriage of justice.

The court *a quo*'s misdirection in failing to take into account all the factors it was required by law to take into account constitutes an irregularity. The remedy provided by the law for rectifying such an irregularity is by way of review, in this case to the High Court. The irregularity *in casu* cannot found an application to the Constitutional Court in terms of s 24(1) of the Constitution.

When an irregularity has been committed by an inferior court, a superior court has to decide whether the irregularity resulted in a substantial miscarriage of justice justifying the setting aside of proceedings on review or appeal. If the irregularity does not result in a substantial miscarriage of justice the proceedings stand.

However, the procedure to be followed when an application for discharge at the close of the State case is dismissed was set out by the Supreme Court in the case of *S v Hunzvi* 2000 (1) ZLR 540 (S), in which the Court held:

“... that the accused has no right of appeal against the refusal of a trial judge to discharge at the end of the prosecution case because at that stage the final determination of the trial has not been reached and the proceedings are still on-going. After conviction, however, the accused has the absolute right, under s 44(2)(a) of the High Court Act [*Chapter 7:06*], to appeal to the Supreme Court on any ground involving a question of law. A refusal to discharge is a question of law and so may be relied upon as a ground of appeal. The ground of refusal to discharge would only succeed if on appeal it were found that at the close of the prosecution case there was no evidence justifying a conviction and that the defence case furnished no proof of guilt.”

Thus, the remedy available to the applicant was one of appeal to the High Court at the conclusion of the trial.

I find no merit in the contention that the failure to give detailed reasons for judgment violated the applicant’s right to a fair trial and that the case should have been referred to the Constitutional Court on that basis.

I finally turn to deal with the issue of what constitutes “lawful authority” and whether the applicant had “lawful authority” to occupy the farm.

Section 2(1) of the Act provides as follows:

“2 Interpretation

(1) In this Act —

‘acquiring authority’ means the Minister responsible for land or any other Minister to whom the President may, from time to time, assign the administration of this Act;

‘fixed date’ means the date fixed in terms of section 1(2) as the date of commencement of this Act; ...

‘lawful authority’ means —

- (a) an offer letter; or
- (b) a permit; or
- (c) a land settlement lease;

and ‘lawfully authorised’ shall be construed accordingly;

‘offer letter’ means a letter issued by the acquiring authority to any person that offers to allocate to that person any Gazetted land, or a portion of Gazetted land, described in that letter;

‘permit’, when used as a noun, means a permit issued by the State which entitles any person to occupy and use resettlement land;

‘resettlement land’ means land identified as resettlement land under the Rural District Councils Act [*Chapter 29:13*].”

The clear and unambiguous meaning of s 2(1) of the Act is that “lawful authority” means an offer letter, a permit and a land settlement lease. Nothing more, nothing less. A letter from the late Vice President, the Presidium or any other member of the Executive does not constitute “lawful authority” in terms of the Act.

In the case of *Commercial Farmers Union and Ors v The Minister of Lands and Rural Resettlement and Ors supra* this Court had this to say at p 19 of the cyclostyled judgment:

“The Legislature in enacting the above provision clearly intended to confer on the acquiring authority the power to issue to individuals offer letters which would entitle the individuals to occupy and use the land described in those offer letters. The draftsman could have used better language to convey the legislative intent, but there can be no doubt that s 2 of the Act confers on the acquiring authority the power to allocate land using the medium of an offer letter. This provision is not in any way inconsistent with ss 16A and 16B of the Constitution. If anything, it fits in well with the overall scheme envisaged in ss 16A and 16B of the Constitution, which is that the acquiring authority acquires land and reallocates the land so acquired. The acquisition of land and its redistribution lies at the heart of the land reform programme. I have no doubt that the Minister as the acquiring authority can

redistribute land he has acquired in terms of s 16B of the Constitution by means of the following documents -(a) an offer letter; (b) a permit; and (c) a land settlement lease. The Minister is entitled to issue a land settlement lease in terms of s 8 of the Land Settlement Act [*Cap 20:01*]. However, if the Minister allocates land by way of a land settlement lease in terms of s 8 of the Land Settlement Act he is enjoined to comply with the other provisions of that Act, such as s 9 which requires him to consult the Land Settlement Board which obviously has to be in existence. I do not accept the contention by the applicants that the Minister can only allocate acquired land by way of a land settlement lease which he presently cannot do because there is no Land Settlement Board in existence.

The Minister has an unfettered choice as to which method he uses in the allocation of land to individuals. He can allocate the land by way of an offer letter or by way of a permit or by way of a land settlement lease. It is entirely up to the Minister to choose which method to use. I am not persuaded by the argument that because the offer letter is not specifically provided for in the Constitution it cannot be used as a means of allocating land to individuals.

I am satisfied that the Minister can issue an offer letter as a means of allocating acquired land to an individual.

Having concluded that the Minister has the legal power or authority to issue an offer letter, a permit or a land settlement lease, it follows that the holders of those documents have the legal authority to occupy and use the land allocated to them by the Minister in terms of the offer letter, permit or land settlement lease.”

“Lawful authority” means an offer letter, a permit and a land settlement lease.

The documents attached to the defence outline are not offer letters, permits or land settlement leases issued by the acquiring authority. They do not constitute “lawful authority” providing a defence to the charge the applicant is facing.

The applicant did not have an offer letter, a permit or a land settlement lease. Accordingly, he had no lawful authority to occupy or continue to occupy the farm. The letters from the late Vice President Msika and those of the Ministry of Lands, Land Reform and Resettlement do not constitute “lawful authority”. “Lawful authority” in terms of the Act begins and ends with an offer letter, a permit and a land settlement lease. A telephone call or a letter, even from the Minister of Lands, Land Reform and Resettlement is not “lawful authority”.

It was also submitted that the concept of “lawful authority”, as defined in s 2(1) of the Act is inconsistent with s 16B(6) of the Constitution and therefore *ultra vires*. I have already cited s 2(1) of the Act in the relevant part that defines “lawful authority”.

Section 16B(6) of the Constitution provides as follows:

“16B (6) An Act of Parliament may make it a criminal offence for any person, without lawful authority, to possess or occupy land referred to in this section or other State land.”

The issue here is whether or not the concept of “lawful authority” in the Constitution is fettered by the definition of “lawful authority” in the Act.

The applicant, in his submission that s 2 of the Act is *ultra vires* s 16B(6) of the Constitution, relied heavily on the decision of this Court in *SC Shaw (Pvt) Ltd v Minister of Lands and Agricultural Resettlement* 2005 (2) ZLR 153 (SC), where it was held that the discretion of the Administrative Court to determine what was reasonably necessary could not be fettered or restricted by an Act of Parliament without first amending the Constitution.

I am not persuaded by this submission for a number of reasons.

It is common cause that s 16B(6) of the Constitution does not define the concept of “lawful authority”. As a result of this, the applicant’s contention that the Act violates a concept which the Constitution does not define is untenable. The Constitution does not confer on the courts the power to determine what constitutes “lawful authority”.

The Act therefore cannot take away from the courts that which the Constitution has not conferred on the courts.

A careful reading of s 16B(6) of the Constitution shows that it specifically allows Parliament to create a criminal offence for any person, without lawful authority, to possess or occupy gazetted land or other State land. For Parliament to successfully create such an offence it has to define the concept of “lawful authority” first. The framers of the Constitution, by expressly conferring on Parliament the power to enact a law that criminalises the possession or occupation of gazetted land by any person “without lawful authority”, must have intended to confer on the Legislature the power to define the concept of “lawful authority”. Parliament could not have properly enacted a valid law that criminalises the occupation or use of land without defining what constitutes “lawful authority”. A criminal enactment that does not define what constitutes “lawful authority” would be too vague. An enactment that creates a criminal offence has to be sufficiently clear and precise to be constitutional. A citizen is constitutionally entitled to know exactly when he/she contravenes the law. The definition of “lawful authority” enables the citizen to know exactly when it is that he can occupy gazetted land lawfully without committing a criminal offence.

The facts and circumstances of this case are distinguishable from those in *SC Shaw (Pvt) Ltd supra*. In *SC Shaw (Pvt) Ltd supra* Parliament had enacted laws, which in effect limited the Administrative Court’s discretion that it previously enjoyed in determining whether reasonably necessary grounds for the acquisition of the land existed. In this case, there was no form of “lawful authority” enjoyed by the former owners or occupiers of gazetted land that has been negated by s 2 of the Act. The allegation that the definition of

“lawful authority” provided for in s 2 of the Act impinges upon s 16B(6) of the Constitution is far-fetched and premised on an incorrect interpretation of that provision.

Consequently, this submission also fails.

In the result, I am satisfied that this application has no merit and must be dismissed with no order as to costs.

MALABA DCJ: I agree

ZIYAMBI JA: I agree

GARWE JA: I agree

CHEDA AJA: (Retired)

Coghlan, Welsh & Guest, applicant’s legal practitioners

The Attorney-General’s Office, second respondent’s legal practitioners