

PETER HENRY MAYNARD NASH

and

JOHN CHRISTIAN MAYNARD NASH

versus

THE PRESIDENT OF ZIMBABWE

and

THE MINISTER OF LANDS, AGRICULTURE
 & RURAL RESETTLEMENT

HIGH COURT OF ZIMBABWE
CHIWESHE J
BULAWAYO 26 & 28 FEBRUARY 2002

D M Campbell for the applicants
S Mazibisa for the respondents

Urgent Chamber Application

 CHIWESHE J: The applicants seek an order firstly calling upon

respondents to show cause why the Acquisition of Land Orders made by second

respondent for and on the authority of the first respondent on 24 December 2001

under the provisions of section 8 of the Land Acquisition Act [Chapter 20:10]
in

respect of applicant's farms, Swaart Spruit and the remaining extent of
Mosenthal's

farm, should not be set aside and respondents should not be ordered to pay the
costs of

this application jointly and severally, the one paying the other to be
absolved, and

secondly, that pending the discharge of the "rule nisi" both respondents be
interdicted

from exercising any rights of ownership over the said farms including the right
to

enter thereon, survey, demarcate and allocate to others any portions thereof,
and from

evicting applicants or either of them from any part of the said farms.

16/02

The facts in this matter are common cause. Despite an earlier undertaking
or

agreement reached between the two parties whose history is better documented in the

Administrative Court, the respondents on 4 January 2002 and in breach of the said

undertaking or agreement, caused, through second respondent, service upon applicants

of Acquisition of Land Orders in terms of section 8 of the Land Acquisition Act

[Chapter 20:10] in respect of Mosenthal's farm and Swaart Spruit. Applicants aver

that the issuance of these acquisition orders is unlawful unless respondents can

establish grounds upon which they seek to repudiate the agreement reached between

the two parties.

On the other hand whilst conceding the facts as alleged by the applicant,

respondents argue that their actions are perfectly in order. They acted in terms of an

Act of Parliament whose provisions take precedence over any prior arrangement

between the two parties. On the face of it the acquisition orders appear to have been

issued in terms of the Act and relevant regulations. It has not been shown to the

court's satisfaction that prima facie these acquisition orders are defective. The court

is not persuaded either, given the powers conferred upon the respondents by the Act

that it was intended that where an acquisition order given in terms of section 8 appears

to be in breach of an earlier undertaking, then that order is invalid purely by virtue of

that apparent breach.

Accordingly it is held that the acquisition orders issued by second respondent

are valid. That being the case applicants cannot escape the natural consequences of

a section 8 acquisition order, namely that respondents may exercise the rights of an

owner in respect of the properties in question.

