

MANDINDINDI FARM SETTLERS  
versus  
MAZOWE RURAL DISTRICT COUNCIL  
and  
THE DISTRICT ADMINISTRATOR

HIGH COURT OF ZIMBABWE  
BHUNU J  
HARARE 23 February and 3 March 2004

### **Urgent Application**

Mr *Mutezo*, for the applicant  
Mrs *Nyirongo*, the for 1<sup>st</sup> respondent  
Mr *Paul*, for the 3<sup>rd</sup> party, Patrick M.F. Krambergar

BHUNU J: The third party Mr Patrick Krambergar is the previous owner of Mandindindi farm prior to its acquisition in terms of the Land Acquisition Act [*Chapter 20:10*] on the 5<sup>th</sup> December 2003. Prior to that date he had obtained a provisional order from Hungwe J dated 6<sup>th</sup> October 2003 against 7 named settlers in the following terms:

#### “TERMS OF FINAL ORDER SOUGHT

That you show cause to this Honourable Court why a final order should not be made in the following terms:-

1. That the provisional relief granted be confirmed.
2. Pending proper acquisition of the property Respondents are interdicted from interfering with applicant's farming activities on Mandindindi Farm. (my emphasis)
3. That Respondents pay the cost of this application.

#### INTERIM RELIEF GRANTED

Pending determination of this matter, the applicant is granted the following relief:-

1. That applicant is entitled to remove all or any of his movable property from the farm and respondents are interdicted from preventing or obstructing the removal thereof.
2. Respondents be interdicted from:
  - (a) interfering with Applicant's farming activities;
  - (b) Encouraging others to come onto the property without the consent of applicant.

3. That the Deputy Sheriff is directed to assist Applicant with the removal of his property and to enlist the assistance of the police in carrying out and enforcing this order.”

It is self evident and abundantly clear that the above provisional order only afforded Mr Krambergar protection pending the lawful acquisition of the farm in terms of the Land Acquisition Act [*Chapter 20:10*].

The papers before me establish quite clearly that the acquiring authority signed an acquisition order on the 5<sup>th</sup> December 2003 which order was served on Mr Krambergar on the 6<sup>th</sup> December 2003. The acquisition order pertained to the entire farm measuring 883,0700 hectares in extent.

The acquisition order still stands and is binding as it has not been set aside, nullified or revoked.

In terms of section 9(1) of the Land Acquisition Act [*Chapter 20:10*] service of the section 8 Acquisition Order on the previous owner Patrick M.F. Krambergar constituted written notice to him to cease to occupy, hold or use that land forty-five days after the date of service. Failure to comply with the provisions of that section constitutes a criminal offence punishable by a severe fine.

Under section 9(1)(b)(ii) Mr Krambergar is required to vacate the farm after 90 days from the date of service of the invalid order plus seven days after the service of the subsequent order on him.

The long and short of it all is that Mr Krambergar has been divested of rights, title and interest in Mandindindi Farm by operation of law.

It follows therefore that Hungwe J's provisional order which sought to protect Mr Krambergar's rights, title and interest in Mandindindi Farm fell away when the farm was acquired. The provisional order was in any case subject to the farm being properly acquired.

Following the acquisition of Mandindindi Farm there was a dispute over 25 hectares of Citrus and guava fruit trees between settlers allocated plots on the farm by the acquiring authority and the first respondent Mazowe Rural District Council. The settlers were claiming that, that portion of the farm had been allocated to them whereas the first respondent was claiming that it had been allocated to it.

The dispute culminated with the settlers filing an urgent application before me in which they obtained a provisional order restraining the first and second respondent respondents from interfering with their operations on the disputed 25 hectares of citrus fruit.

In that application they did not cite Mr Krambergar as a party. He now complains that he ought to have been cited as an interested party. He claims that he is the rightful owner of the disputed plantation. He relies on the order of Hungwe J under case number HC 8387/03 for protection of his perceived rights and title to the citrus and guava plantation in dispute.

It is trite and an established rule of our law that what is on the land goes with the land. Mr Krambergar lost his rights, title and interest in the plantation when the land was acquired on the 6<sup>th</sup> December 2003 in terms of the Land Acquisition Act. What this means is that the disputed plantation acceded to the new owner of the land.

That being the case the dispute between the applicants and the first and second respondents does not concern him. The applicants were therefore correct in not citing him as a party to the disputed chamber application before me heard on the 29<sup>th</sup> January 2004.

The applicants had no obligation to disclose Mr Justice Hungwe's order because that order had been overtaken by events and had ceased to be of any force or effect upon the acquisition of the farm on the 6<sup>th</sup> of December 2003.

Initially the first respondents sought to argue that it had been lawfully allocated the disputed 25 hectares of citrus and guava plantations a fact which it was unable to prove. The evidence upon which it relied simply established that there is an intention by the authorities to allocate that piece of land to the first respondent. Faced with that stark reality its acting personnel and administration officer Mrs Nyirongo was constrained to admit that there were only recommendations made by the Mazoe District Lands Committee to the Provincial Committee for the disputed land to be allocated to the first respondent.

It is clear to me that a mere intention or recommendation to allocate land does not confer any rights on the intended beneficiary. On the other hand the mere fact that one is disputing the acquisition of his land does not nullify an acquisition order which is valid on the face of it. Rights only accrue when land is lawfully allocated by the appropriate authority and if lost are regained through the due process of law.

In this case none of the respondents have been able to persuade me that they have the necessary legal rights, title and interest justifying me to reconsider and rescind the provisional order I granted in favour of the applicants. I am also satisfied that my order is not in conflict with Hungwe J's order because his order had expired at the time I made my order.

In the result I can only declare:

1. That the provisional order I issued under case No. HC 7334/04 on the 29<sup>th</sup> January 2004 is valid and binding.
2. That the first and third party, shall bear the costs of this hearing.

*Mutezo & Partners*, the applicant's legal practitioners.

*Wintertons*, 3<sup>rd</sup> respondent's legal practitioners.