

Caffeinated coffee 3 x 200g CLOVET CONSULTANTS (PVT) LTD
and
CASSIAN BEN MACHERERE
and
MABEL MACHERERE
versus
MINISTER OF LANDS AND RURAL RESETTLEMENT
and
OTTOMAN MAGAYA

HIGH COURT OF ZIMBABWE
MUREMBA J
HARARE, 31 January 2017 and 31 May 2017

OPPOSED MATTER

O Mushuma, for the applicants
E Mukucha, for the 1st respondent
A A Debwe, for the 2nd respondent

MUREMBA J: In their application the applicants stated that, “this is a review application in terms of s 26 and 27 of the High Court Act [*Chapter 7:06*] or for declaratory relief in terms of s 14 of the said Act and/or, alternatively, an application for relief in terms of s 4 of the Administrative Justice Act [*Chapter 10:28*].

Having gone through the affidavits of the parties the facts of this case can be summarised as follows. The second and third applicants are husband and wife. They are both directors and shareholders of the first applicant. They bought all the shares in the first applicant on 15 June 1998. On 31 December 1998 the first applicant acquired a piece of land situate in the District of Salisbury called Subdivision C of Elvington measuring 286, 0621 hectares. From 1998 to 2013 the applicant was in peaceful and undisturbed possession of the farm. In 2013 the second respondent who had applied to the first respondent for land identified the farm in question as vacant. He notified the first respondent’s ministry about it. The first respondent, wrongly believing that the farm had already been acquired as state land issued offer letters to the second respondent and other beneficiaries on 17 July 2013.

As the second respondent and the other beneficiaries tried to take occupation of the farm, a wrangle with the applicants ensued. The parties were in and out of the criminal courts as they fought each other. Officials from the first respondent's ministry were also involved in the dispute as they tried to resolve it. The first respondent later realised that it had erroneously or wrongly issued offer letters to the second respondent and 6 other beneficiaries in respect of this farm. The farm had never been gazetted and as such it had not been acquired as State land. Upon this realisation, the first respondent sought to regularise his error. On 30 January 2015, he published the acquisition of the said farm in the *Government Gazette*. With effect from that date, the farm became State land. On 25 February 2015 the first respondent issued the second respondent with a new offer letter. The other 6 beneficiaries were also issued with new offer letters.

The applicants were unhappy with the acquisition and wrote correspondence to the first respondent registering their protests and asking for a reversal of the decision. The request was not granted. This resulted in the applicants making the present application for review of the first respondent's decision to compulsorily acquire the farm which is registered in favour of the first applicant under Deed of Transfer No. 12064/98 and thus pray for a declaratory order nullifying the compulsory acquisition. They want the court to grant the following order.

"It is ordered that:

1. The compulsory acquisition by the first respondent on 30th January 2015 of a certain piece of land situate in the District of Salisbury called Subdivision C of Elvington measuring 286, 0621 hectares registered in favour of the 1st applicant on 31 December 1998, be, and is hereby declared null and void.
2. Any offer letter purportedly issued or to be issued to the 2nd respondent or offer letters purportedly issued to any other persons by the first respondent in respect of the land referred to in paragraph 1 of this order, or any subdivision thereof, be, and is/are hereby declared a legal nullity.
3. The 1st and 2nd respondents shall bear the costs of this application on the legal practitioner and client scale, jointly and severally, the one paying the other to be absolved."

The applicants stated in their founding affidavit that their grounds for seeking review are that:

- (i) The purported compulsory acquisition of the farm was at the unrelenting instigation of the second respondent and 6 other beneficiaries who had a bitter and long running dispute with them since May 2013 over the said farm. The

applicants averred that the subsequent acquisition of the farm by the first respondent constitutes an unbridled reprehensible abuse of power.

- (ii) The first respondent and his subordinates openly sided with the second respondent in unlawfully dispossessing them of their farm. The first respondent in compulsorily acquiring the farm was thus motivated by ulterior motives tainted with bias, malice, bad faith, corruption, underhand dealings, favouritism, disfavour, collusion and bribery.
- (iii) The acquisition was arbitrary, capricious, unjust, inequitable and grossly unfair.
- (iv) The applicants said that in the alternative the first respondent in acquiring the farm did not act lawfully, reasonably and in a fair manner in contravention of s 3 (1) of the Administrative Justice Act [*Chapter 20:28*] and his decision is a legal nullity.

The applicants said that on the basis of the above grounds the court should issue a *declaratur* nullifying the purported compulsory acquisition of the farm and nullifying any offer letter(s) already issued or are to be issued by the first respondent.

In response to the application, both respondents denied that they colluded to dispossess the applicants of their farm. They disputed the averments of bias, malice, bad faith, corruption, underhand dealings, favouritism, disfavour and bribery. The first respondent disputed that the acquisition was arbitrary, capricious, unjust, inequitable and grossly unfair. He said that the acquisition was done procedurally and in terms of the law. The first respondent averred that the farm was acquired for the purpose of agricultural settlement and was needed for settlement of new farmers under the land reform programme. He said that the farm was lawfully acquired by the State in terms of s 72 (2) of the Constitution of Zimbabwe Amendment Act (No 20) Act 2013 which authorises and empowers the acquiring authority to acquire any agricultural land for public purpose including settlement for agricultural or other purposes. He said that he acquired the farm because it was under utilised and virtually left idle by its owners (the applicants) who also happen to own the farm that is next to it. That the applicants own the farm that is next to the one that was acquired is a fact which is common cause to the parties.

The second respondent said that furthermore s 72 (3) (c) of the Constitution provides that acquisition may not be challenged on the grounds that it was unfair and inequitable. He

said that he lawfully, reasonably and fairly exercised his discretion in acquiring the farm for its intended purpose. He said that land acquisition for agricultural purposes is not done in terms of s 3 (1) of the Administrative Justice Act but in terms of s 72 of the constitution. He submitted that the Constitution does not provide the grounds on which the acquisition of land for agricultural purposes may be challenged. He said that the applicants have not submitted any ground upon which he acted unlawfully and unprocedurally. He said that the law empowers him as the acquiring authority to acquire any farm whether indigenous owned or not. The discretion is his. He said that the law only provides that where acquisition is made the former owner must be compensated for improvements made on the land.

The second respondent stated that he is only a beneficiary of the land reform programme in that he was issued with offer letters in respect of the farm in dispute, but he never corrupted or bribed the first respondent in order to be allocated that piece of land or for the first respondent to acquire that land. He said that the first minister to offer him the first offer letter in July 2013 was Honourable H M Murerwa who was the then Minister of Lands and Rural Resettlement. Honourable D T Mombeshora being the current minister of that portfolio then issued him with the second offer letter in February 2015. The second respondent said that he could not have bribed and corrupted 2 different ministers.

In arguing the matter Mr *Mushuma* submitted that that the procedure for compulsory acquisition of land is as spelt out in s 71 (3) (c) as read with s 68 of the Constitution and s 3 (2) of the Administrative Justice Act which gives effect to the rights protected by s 68 of the Constitution. S 71 (3) (c) of the Constitution is a provision dealing with property rights. It requires the acquiring authority to (i) give reasonable notice of the intention to acquire property to all the persons who will be affected by the acquisition; (ii) to pay fair and adequate compensation for the acquired property, and (iii) if the acquisition is contested, to apply to court before acquiring the property or not later than 30 days after acquiring the property, for an order confirming the acquisition. S 68 of the Constitution deals with the right to administrative justice. It states that every person has a right to administrative conduct that is lawful, reasonable, proportionate, impartial and both substantively and procedurally fair. S 3 (2) of the Administrative Justice Act requires an administrative authority to give adequate notice of the nature and purpose of the proposed action to the person to be affected by the proposed action. In citing all these provisions Mr *Mushuma* argued that there was no legal justification for the compulsory acquisition of the applicants' farm. He submitted that the

applicants were not given notice of the intended acquisition of their farm, they were not given a chance to make representations with regards to the intended acquisition before its acquisition on 30 January 2015 and the acquisition was not referred to court for confirmation.

In dealing with the grounds for review that the applicants raised, Mr *Mushuma* argued that the first respondent acquired the farm at the unrelenting instigation of the second respondent and 6 other beneficiaries. He said that in acting so, the first respondent's actions were tainted with illegality in that there was bias, malice, bad faith, corruption, bribery, favouritism and collusion involved. He also added that these factors show that the first respondent's conduct was tainted with irrationality. Furthermore, Mr *Mushuma* said that in the circumstances, the compulsory acquisition of the farm was arbitrary, capricious, unjust, inequitable and grossly unfair. He said that, put differently, the first respondent's action was tainted with procedural impropriety.

Mr *Mushuma* argued that the first respondent's argument that the farm had long been earmarked for resettlement purposes after it was established that it was under-utilized was false and without foundation. He submitted that the farm was being fully utilized with a huge number of livestock on it. Furthermore, he submitted that the applicants having purchased the farm way back in 1998 before the Land Reform Programme it was unlawful for the first respondent to purport to compulsorily acquire a farm purchased by indigenous black farmers in order to parcel out same to those that are politically connected such as the second respondent who was referred to the District Administrator and the District Lands Officer from the Governor's office. Here, Mr *Mushuma* was making reference to the report on the farm dated 9 May 2013 which was written by P Matshe, the District Land Officer and E Masunda, the District Administrator. In that report they said that they had visited Elvington farm after the second respondent had made a request to be allocated that farm. They said that they found that the farm was vacant yet the soils were suitable for all kinds of farming. They said that they were recommending the second respondent to be given the farm as he was sent to them from the Governor's office.

Mr *Mukucha* disputed all the arguments by Mr *Mushuma* arguing that the acquisition was done procedurally in terms of the law. He submitted that compulsory acquisition of agricultural land for purposes of resettlement is done in terms of s 72 (2) of the Constitution which provision relates exclusively to the acquisition of agricultural land. He submitted that in terms of that provision the acquiring authority is not required to give notice of intention to

acquire to the owner of the land before acquisition. There is no prior consultation required before the acquisition is effected. He further submitted that the acquiring authority is not under a duty to apply to a court of law for an order confirming the acquisition. He submitted that in terms of s 72 (2), the acquiring authority acquires land by way of publishing a notice in the Gazette identifying the agricultural land to be acquired and stating therein the purpose for which the land is required. He submitted that in acquiring the farm belonging to the first applicant this is what the second respondent did. Mr *Mukucha* further submitted that the mere fact that the applicants are black people does not preclude the minister from acquiring their extra farm since there is no law which prohibits lawful acquisition of land belonging to indigenous persons. He further submitted that any attack on how the second respondent acquired the farm belonging to the applicants is misplaced. Furthermore, Mr *Mukucha* submitted that the first applicant's recourse is to apply for compensation for the improvements it made on the farm before it was acquired.

Mr *Mukucha* further submitted that the offer letter that was issued to the second respondent was issued lawfully and as such his presence at the farm is permissible in terms of s 3 of the *Gazetted Land (Consequential Provisions) Act [Chapter 20:28]*.

Mr *Debwe* submitted that the applicants' application is not a proper one for the exercise of this court's discretion under s 14 of the *High Court Act [Chapter 7:06]*. He reiterated the submissions made by Mr *Mukucha* that s 72 of the Constitution is the exclusive provision that gives power to the State to compulsorily acquire privately owned agricultural land for public purpose including settlement for agricultural purposes¹ with an obligation to pay compensation for improvements effected on it before the acquisition². Mr *Debwe* submitted that the second respondent in acquiring the applicants' farm duly published a notice in the Gazette and as such it cannot be said that the acquisition was illegal, procedurally improper or irrational. He further submitted that the applicants had not adduced any evidence of corruption, bias or favouritism on the part of the first respondent that resulted in the compulsory acquisition of the said farm. He further said that no evidence had been placed before the court to prove that the second respondent or his co-beneficiaries bribed the first respondent or his officials to induce him to acquire the applicants' farm. Mr *Debwe* further submitted that in terms of s 72 (2) of the Constitution the question of what property should be

¹ S 72 (2) of the Constitution.

² S 72 (3) of the Constitution.

acquired and in what manner is to the discretion of the State as represented by the acquiring authority, it is not a judicial one³. He submitted that as such this court cannot therefore interfere with the exercise of the State's discretion. Mr *Debwe* submitted that in *casu* the acquisition was lawful and proper, the applicants failed to make out a case for a *declaratur*.

Analysis

A look at the Constitution of Zimbabwe shows that s 72 of the Constitution is the only provision in the Constitution which provides for the rights to agricultural land. As was correctly submitted by the respondents' counsels, the acquisition thereof is done exclusively in terms of s 72 (2) of the Constitution and not in terms of any other provision of the Constitution. The Act which provides for the procedure for its acquisition is the Land Acquisition Act [*Chapter 20:10*]. S 71 of the Constitution which Mr *Mushuma* sought to refer to deals with property rights in respect of other property which is not agricultural land. As such the whole of its provisions are irrelevant for purposes of compulsory acquisition of agricultural land for a public purpose. The second respondent as the acquiring authority is therefore not bound by any of its provisions when acquiring agricultural land for a public purpose, but by the provisions of s 72. This means that s 71 (3) (c) (i) (ii) and (iii) of the Constitution which Mr *Mushuma* referred to which requires the acquiring authority to (i) give reasonable notice to a person with interest in property of the intended acquisition, (ii) to pay compensation for the property and (iii) to apply to court if the acquisition is contested is not applicable in the present matter. What buttresses this point is the fact that s 71 (3) states that its provisions are subject to s 72. The section goes,

"71 (3) Subject to this section and to section 72, no person may be compulsorily deprived of their property except where the following conditions are satisfied—

- (a) the deprivation is in terms of a law of general application;
- (b) the deprivation is necessary for any of the following reasons—
 - (i) in the interests of defence, public safety, public order, public morality, public health or town and country planning; or
 - (ii) in order to develop or use that or any other property for a purpose beneficial to the community;
- (c) the law requires the acquiring authority—

³ Mike Campbell v The Minister of National Security Responsible for Land, Land Reform and Resettlement & Others SC 49/07.

- (i) to give reasonable notice of the intention to acquire the property to everyone whose interest or right in the property would be affected by the acquisition;
- (ii) to pay fair and adequate compensation for the acquisition before acquiring the property or within a reasonable time after the acquisition; and
- (iii) if the acquisition is contested, to apply to a competent court before acquiring the property, or not later than thirty days after the acquisition, for an order confirming the acquisition;

It is clear from the above provision that it does not relate to agricultural land but other property that is not agricultural land.

I am again not in agreement with the submissions which were made by Mr *Mushuma* that in acquiring the farm, the first respondent ought to have complied with the provisions of s 3 (1) and (2) of the Administrative Justice Act which require an administrative authority to act lawfully, reasonably, in a fair manner and to give adequate notice to the person to be affected by a proposed action. The Administrative Justice Act is not applicable in this case because as I have already said such acquisition is done in terms of s 72 of the Constitution. The Constitution being the supreme law cannot be subservient to an Act, the Administrative Justice Act. In any case the Land Acquisition Act is the Act which specifically deals with the procedure for compulsory acquisition of land.

I do not see the relevance of S 68 of the Constitution which deals with the right to administrative justice in the compulsory acquisition of agricultural land which is specifically and exclusively catered for under S 72.

Section 72 (2) which deals with the acquisition of agricultural land reads as follows:

“72 (2) Where agricultural land, or any right or interest in such land, is required for a public purpose, including—

- (a) settlement for agricultural or other purposes;
- (b) land reorganisation, forestry, environmental conservation or the utilisation of wild life or other natural resources; or
- (c) the relocation of persons dispossessed as a result of the utilisation of land for a purpose referred to in paragraph (a) or (b);

the land, right or interest may be acquired by the State by notice published in the *Gazette* identifying the land, right or interest, whereupon the land, right or interest vests in the State with full title with effect from the date of publication of the notice.”

It is clear that in terms of s 72 (2) the State acquires agricultural land by way of publishing a notice in the Gazette identifying the land, whereupon the land, right or interest vests in the State with full title with effect from the date of publication of the notice. All the other requirements that are spelt out in s 71 (3) which I have already outlined above are not spelt out in s 72 (2). Publication in the Gazette constitutes enough notice of the acquisition. It is clear that Mr *Mushuma* failed to appreciate the distinction between s 71 and s 72 and their applicability.

The procedure for compulsory acquisition of land is laid down in s 5 (1) of the Land Acquisition Act [*Chapter 20:10*]. The Land Acquisition Act is the Act which empowers the President and other authorities to acquire land. S 5 (1) reads as follows:

“Preliminary notice of compulsory acquisition

5 (1) Where an acquiring authority intends to acquire any land otherwise than by agreement, he shall—
(a) publish once in the *Gazette* and once a week for two consecutive weeks, commencing with the day on which the notice in the *Gazette* is published, in a newspaper circulating in the area in which the land to be acquired is situated and in such other manner as the acquiring authority thinks will best bring the notice to the attention of the owner, a preliminary notice—

(i) describing the nature and extent of the land which he intends to acquire and stating that a plan or map of such land is available for inspection at a specified place and at specified times; and

(ii) setting out the purposes for which the land is to be acquired; and

(iii) calling upon the owner or occupier or any other person having an interest or right in the land who—

A. wishes to contest the acquisition of the land, to lodge a written objection with the acquiring authority within thirty days from the date of publication of the notice in the *Gazette*;

or

B. wishes to claim compensation in terms of Part V for the acquisition of the land, to submit a claim in terms of section *twenty-two*, where the land is not specially Gazetted land; and

(b) serve on the owner of the land to be acquired and the holder of any other registered real right in that land whose whereabouts are ascertainable after diligent inquiry at the Deeds Registry and, if necessary, in the appropriate companies register, notice in writing providing for the matters referred to in subparagraphs (i), (ii) and (iii) of paragraph (a):

Provided that in respect of specially Gazetted land the publication of a preliminary notice in the *Gazette* and once a week for two consecutive weeks (commencing on the day on which the notice in the *Gazette* is published) in a newspaper circulating in the area in which the land to be acquired is situated, shall be deemed to constitute service of notice in writing on the owner of the land to be acquired and the holder of any other registered real right in that land.” (my underlining for emphasis)

What is pertinent to note from s 5 (1) is that it makes a distinction between the acquisition of land that is specially gazetted and that which is not. ‘Specially Gazetted Land’ is defined in s 2 of the Land Acquisition Act as agricultural land. The procedure for acquiring land that is not specially gazetted is the one that is outlined in s 5 (1) whilst the procedure for acquiring specially gazetted land is outlined in the proviso where I have underlined.

Where the land is not specially Gazetted land, the acquiring authority is required among other things to make a publication in the Gazette calling upon the owner or occupier

or any person with an interest or right in the land who wishes to contest the acquisition to lodge a written objection within 30 days of the publication of the notice or who wishes to claim compensation to submit a claim. Further, the acquiring authority is also required to serve the notice on the land owner or holder of title in that land. However, in respect of specially Gazetted land, all that is required is for the acquiring authority to publish a notice in the Gazette and once a week for two consecutive weeks in a newspaper circulating in the area where the land to be acquired is situated. This is deemed to constitute service of notice in writing on the owner of the land to be acquired and the holder of any other registered real right in that land. Let me hasten to point out that the distinction between s 71 and s 72 is the same distinction that is between s 5 (1) and its proviso. Whilst s 5 (1) provides the procedure for the acquisition of any other property that is not agricultural land, its proviso provides the procedure for the acquisition of agricultural land. Put differently, s 71 of the Constitution and s 5 (1) of the Land Acquisition Act provide for the acquisition of any other land which is not agricultural land or land which is not specially gazetted land whilst s 72 and the proviso to s 5 (1) of the Land Acquisition Act provide for the acquisition of agricultural land or land which is specially gazetted land.

In *casu* the land that we are dealing with is agricultural land which means that it is specially Gazetted Land which only requires publication of a notice in the Gazette and the local newspaper and nothing more. There was therefore no need for the applicants to be personally served with the notice before acquisition as Mr *Mushuma* sought to argue. The publication of the notice that was done by the second respondent in the gazette suffices.

Another difference which is worth noting between compulsory acquisition of land under s 71 and that done under s 72 of the Constitution is that under s 71 compensation is paid for the land that is acquired⁴ whereas under s 72 compensation is not paid for the land but for the improvements which were made on the land prior to acquisition⁵. So the issue of payment of compensation for the land that was acquired from the first applicant that Mr *Mushuma* raised does not even arise. What the first applicant may claim is compensation for the improvements it made on the farm before it was acquired. In terms of s 72 (3) (b) courts are even barred from entertaining applications for compensation for agricultural land compulsorily acquired. In terms of s 72 (3) (c) the acquisition may not be challenged on the

⁴ See s 71 (3) (c) (ii).

⁵ See s 72 (3) (a).

ground that it was discriminatory in contravention of s 56. This means that these are the two grounds upon which acquisition of agricultural land may not be challenged. I therefore agree with Mr *Mushuma* that this means that acquisition thereof may be challenged on other grounds.

Acquisition of land being an administrative action is subject to control by judicial review unless expressly excluded by the Constitution or statute. In *Secretary for transport & Anor v Makwavarara 1991* (1) ZLR 18 (SC) at p 20 KORSAH JA remarked that administrative action is subject to control by judicial review under three heads, namely, illegality, irrationality and procedural' impropriety. He said,

“Administrative action, it was conceded by both counsel, is subject to control by judicial review under three heads:

- (a) Illegality, where the decision-making authority has been guilty of an error in law;
- (b) Irrationality, where the decision-making body has arrived at a decision "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it"; per LORD DIPLOCK in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374; [1984] 3 All ER C 935 (HL) at 951A; and
- (c) Procedural Impropriety, where the decision-making authority has failed in its duty to act fairly. See *PF-SCAPE v Minister of Justice, Legal and Parliamentary Affairs* 1985 (1) ZLR 305 (SC) at 326-7; 1986 (1) SA 532 (ZS) D at 548-549.”

In *Davies & Ors v Minister of Lands, Agriculture and Water Development* 1996 (1) ZLR 681 (S) at 693 G, GUBBAY CJ (as then was) remarked that;

“Moreover, the finality of the Minister's decision does not oust the control of the High Court over administrative action by judicial review. See s 26 of the High Court Act [Chapter 7:06]. If the designee is able to establish one of the recognised grounds of illegality, irrationality or procedural impropriety, he will succeed in having the decision set aside or corrected. See *PF-ZAPU v Min of Justice* (2) 1985 (1) ZLR 305 (S) at 325H-327C, 1986 (1) SA 532 (ZSC) at 548C-549A; *Secretary for Transport & Anor v Makwavarara* 1991 (1) ZLR 18 (S) at 20A-D.”

This means that other than the grounds ousted in s 72 (3) (a) and s 72 (3) (b) of the Constitution, if an applicant can show some grounds of illegality, irrationality or procedural

impropriety for challenging the compulsory acquisition of his land he can bring an application for review of the minister's decision.

In *casu* the applicants did not lead evidence to support the grounds for review that they raised. I am not satisfied that the applicants managed to adduce evidence in support of the allegations of bias, malice, corruption, favouritism and collusion that they are making against the respondents. The fact that the second respondent identified the farm as idle to the first respondent's subordinates is not proof or evidence of all these averments. I do not see anything untoward about a person who has applied for land allocation to identify idle or vacant land and point it out to the acquiring authority. After all the acquiring authority will still make its own investigations to verify if indeed the land is idle or unoccupied. It appears to me that this is exactly what happened in the present case. Other than the fact that the second respondent identified the land to the first respondent, the applicants did not adduce any other evidence which shows that there was collusion between the respondents and that in acquiring the farm, the first respondent acted on the influence of the second respondent. The fact that the second respondent went to see the District Lands Officer and the District Administrator having been referred to them from the governor's office does not take the applicants' case any further. In the absence of an explanation surrounding the referral by the the governor I do not see the harm that was done by the referral. This is moreso considering that when the farm was visited by the first respondent's officials they reported that they had found it unoccupied. It was not as if the applicant was in occupation of the farm at the time.

I am not satisfied that the acquisition was tainted with illegality, irrationality and procedural impropriety.

With regards to the submission that since the farm belonged to indigenous black people it should not have been acquired, I am unable to deal with this issue for two reasons. Firstly, this issue was not put as a ground for review. It was only mentioned towards the very end of the founding affidavit in paragraph 44. Secondly, it is not an issue that the parties fully argued. In fact both Mr *Mushuma* and Mr *Mukucha* submitted that there is no law which prohibits the compulsory acquisition of land owned by indigenous black people. However, it appears to me that s 72 (7) of the Constitution is meant to guard against compulsory acquisition of land owned by indigenous black people for it reads,

“(7) In regard to the compulsory acquisition of agricultural land for the resettlement of people in accordance with a programme of land reform, the following factors must be regarded as of ultimate and overriding importance—

- (a) under colonial domination the people of Zimbabwe were unjustifiably dispossessed of their land and other resources without compensation;
- (b) the people consequently took up arms in order to regain their land and political sovereignty, and this ultimately resulted in the Independence of Zimbabwe in 1980;
- (c) the people of Zimbabwe must be enabled to re-assert their rights and regain ownership of their land;

and accordingly—

- (i) the former colonial power has an obligation to pay compensation for agricultural land compulsorily acquired for resettlement, through an adequate fund established for the purpose; and
- (ii) if the former colonial power fails to pay compensation through such a fund, the Government of Zimbabwe has no obligation to pay compensation for agricultural land compulsorily acquired for resettlement.”

Considering that in this application, s 72 (7) of the Constitution was not the thrust of the applicants’ argument and there being no mention whatsoever of s 72 (7), I cannot go on to ventilate this provision.

In the result, the application is dismissed with costs.

Mushuma Law Chambers, applicants’ legal practitioners
Attorney General – Civil Division, 1st respondents’ legal practitioners