HORTBAC (PVT) LTD t/a LITTLE FLOWER ENTERPRISES
versus
TIMOTHY MUYAMBO
and
THE MINISTER OF LANDS AND LAND RESETTLEMENT

HIGH COF COURT OF ZIMBABWE
MANGOTA J
HARARE, 25 October 2016 and 29 December, 2017

Opposed matter

N Mugiya, for the applicant
R Maganga, for the 1st respondent
No appearance for the 2nd respondent

MANGOTA J: Prior to May, 2001 the applicant was the owner of a piece of land which is known as Glebe ["Glebe"]. Glebe is situated in the district of Goromonzi. It is 669.19 hectares in extent.

On 18 May 2001, Government acquired the whole of Glebe. It did so through the Government Gazette Extraordinary, Vol LXXXIX, No. 21A. The acquisition was in terms of its land reform programme.

Following its acquisition of Glebe, Government took the applicant to the Administrative Court. It did so under case number L.A 2898/02. The parties entered into a consent order part of which reads as follows:

> "WHEREUPON, AFTER READING DOCUMENTS filed of record, hearing counsel for the applicant and representative of the respondent,
>
> IT IS ORDERED BY CONSENT THAT:-
>
> 1. The acquisition of the undermentioned property in terms of s 7 of the Land Acquisition Act [*Chapter 20:10*] be and is hereby confirmed.
>   (a) Portion of Glebe measuring 526.82 hectares situated in the District of GOROMONZI HELD under Deed of Transfer number 224/96.
> 2. The acquisition proceedings in respect of the remaining portion of GLEBE measuring 142. 38 hectares situated in the District of GOROMONZI held under Deed of Transfer No. 224/96 <u>be and is hereby withdrawn</u>.

3. The applicant shall subdivide GLEBE and pay the subdivision costs thereof." [emphasis added]

It is mentioned in passing that the second respondent was the applicant in the abovementioned consent order.

The consent order is dated 8 August 2003. It shows, in clear and categorical terms, that Government compulsorily acquired 526.81 hectares of Glebe. The remaining 142.38 hectares of the same was retained by the applicant.

The settlement of the first, by the second, respondent on the piece of land which the applicant retained precipitated the present application. The applicant stated that the first respondent was settled on its land. It moved the court to declare that the offer letter which the second respondent issued to the first respondent be declared null and void. That offer letter, it said, should be set aside.

The respondents opposed the application. The first respondent's two *in limine* matters were that:

(i) the applicant did not have any *locus standi* to apply as it did because, according to him, the land which forms the parties' dispute was compulsorily acquired by Government on 18 May 2001.

(ii) the application was fatally defective as, according to him, the deponent to the founding affidavit was not a director of the applicant and did not, therefore, have the authority to depose to the same.

The respondents' defence on the substance of the application was that the portion of the land which constitutes the parties' dispute was acquired by Government. They said it is Stateland. The first respondent's settlement on the same was, according to them, lawful.

The second respondent claimed to be the owner of the land which is the subject of these proceedings. He realised that his opposition to the application was devoid of merit. He, therefore, chose to remain out of court. He did not file his heads of argument. He was served the notice of set down of the application on 21 October, 2016. He, for the observed reason, failed to appear at court on the day of the hearing of the application.

The attitude of the second respondent to the application is understandable. He is the one who allowed the applicant to retain 142.38 hectares of Glebe. Reference is made in this regard to para (2) of the consent order which the applicant and him concluded in or about August 2003. The Administrative Court confirmed that order on 8 August, 2003. The order states, in a clear and unambiguous language, that the acquisition proceedings which related to 142.38

hectares of Glebe stood withdrawn. The second respondent, therefore, acquired 526.81 hectares of Glebe and returned 142.38 hectares of the same to the applicant.

Both respondents were not being candid with the court when they submitted that Government acquired the land which relates to this application. The long and short of that matter is that it did not. If it did, the second respondent would have produced evidence of the alleged acquisition. The acquisition of 18 May 2001 was partly reversed by the consent order of August, 2003. That order was neither reviewed nor appealed. It is extant and it, therefore, holds.

The first respondent persisted with the opposition of the application. His opposition, however, stood on nothing. His assertion which was to the effect that the applicant had no *locus standi* is devoid of merit. The applicant who, with the consent of the second respondent, retained the contested piece of land has every right to apply as it did. It has *locus standi* in the matter. The opposite of what he asserted is the case. He has no *locus standi*. The offer letter which the second respondent issued to him does not confer any right to the land upon him. It is totally defective and is, therefore, a nullity. See *McFoy* v *United Africa Co Ltd* (1967) 3 All ER 1169 (PC) at 1172, *Guwa, & Anor* v *Willoughbys Investments (Pvt) Ltd*, SC 31/09, *The Hubert Davies Employees Trust (Private) Limited and Ors* v *Croco Holdings (Private) Limited*, SC 35/09.

The first respondent's second preliminary matter lacked any substance. He submitted that the deponent to the founding affidavit did not have the authority to depose to the same. He argued, on the mentioned basis, that the application was totally defective.

Whatever he meant to convey by that line of augment remains a matter for conjecture. The resolution which the applicant's directors passed on 10 May, 2015 refutes the first respondent's unsubstantiated allegation. It clothed the deponent with the requisite authority to depose to the founding affidavit as he did.

Whether or not the applicant, as a legal entity, is separate and different from Little Flower Enterprises (Pvt) Ltd does not remove the deponent's authority to depose to the founding affidavit. He, as is evident from the CR 14 Annexures, is a director in both companies. He, therefore, did have the authority to represent the applicant as per the directors' said resolution.

The first respondent's reliance on s 16 B of the repealed Constitution of Zimbabwe was misplaced. The section deals with land which was identified in the Government Gazette. The land which relates to this application falls outside such land. It was not identified in the

Government Gazette. The consent order of 8 August, 2003 took it outside gazetted land. It is a stand-alone piece of land which Government allowed the applicant to retain.

It was for the abovementioned reason, if for no other, that the applicant was able to successfully evict the first respondent and others who had despoiled it of its land on 15 June, 2015. It did so through an urgent chamber application which it filed under case number HC 5254/15. Reference is made in this regard to p 8 of the record.

The fact that the first respondent did not appeal the interim order which the court entered against him on 15 June, 2015 speaks volumes of his lack of title to the land. *A fortiori* when the offer letter he relies upon to oppose the application was issued to him on 25 May, 2015. The probabilities are that he would have either anticipated the return date or appealed the provisional order if, as he claims, he had title to the land which relates to this application.

The applicant proved its case on a balance of probabilities. Its application was above board. It naturally succeeds.

Before I conclude this judgment, however, it is pertinent for me to raise some very serious disquiet. I dealt with this application on 25 October, 2016. The respondents' opposition of it, I was satisfied, was completely devoid of merit. I, on the mentioned basis, delivered an *ex tempore* judgment in which I granted the applicant's prayer. The order which I made is dated 25 October, 2016.

A year later, the first respondent's legal practitioners wrote:

> "We refer to the above matter in which judgment was delivered by the Honourable Mr Justice Mangota on the 25th of October, 2016 against our client, Mr T. Muyambo.
>
> We kindly request for the judgment in this matter" (emphasis added).

The legal practitioners' abovementioned letter is dated 17 October, 2017. They advanced no reason as to why they waited for a whole year to request for the judgment. Such attitude is, in any view, discourteous. It should not, therefore, be allowed to characterize the system of our justice delivery as occurred *in casu*.

An *ex tempore* judgment is part of the system of justice delivery. It affords to the parties brief reasons for the decision which a court makes. Where a party who is adversely affected by the decision entertains the view that it desires to appeal or review the same, it does well to request for reasons within the time which the rules of court allow. Asking for reasons a year after the event is, in my considered view, nothing other than an abuse of the court, its process and its rules. That conduct, it is hoped, will not only be kept under check but will also cease.

The application is granted as prayed.

Mugiya & Macharaga Law Chambers, applicant's legal practitioners
Maganga and Company, 1st respondent's legal practitioners
Civil Division of the Attorney General's Office, 2nd respondent's legal practitioners