TRIANGLE LIMITED
versus
KILLIOT MUKANYA
and
ROBERT MAKWANYA
and
PATIENCE TSVAKWI
and
TAWANDA MUNGWARI
and
SIMBARASHE MUREHWA
and
MINISTER OF LANDS & RURAL RESETTLEMENT
and
THE ADDITIONAL SHERRIFF – MASVINGO

HIGH COURT OF ZIMBABWE
CHITAPI J
HARARE, 8 November 2016 & 15 February 2017

Opposed Matter

T Zhuwarara, for the applicant
T Mpofu, for the 1st – 5th respondent

CHITAPI J: The applicants' legal practitioners wrote a follow up letter dated 5 December 2016 enquiring on the judgment in this application which was argued before me on 8 November 2016. Whilst there is nothing wrong with counsel following up on reserved judgements, it is expected that such follow up letters which also act as reminders to a judge who has reserved judgment are written after a reasonable period has lapsed. As a matter of fact, this application was one of six applications which I had to accommodate by managing my criminal court roll as I am assigned to the Criminal Division since January 2016. What happens is that due to the increased influx of opposed applications, judges notwithstanding the divisions to which they are assigned are allocated a number of opposed applications to also deal with in addition to their

normal court roll. Of the six opposed applications which I had been allocated as aforesaid, I set down this and another application for hearing at 9:00am after which l had to continue with the criminal trial which was ongoing at 10:00am. It is important that counsel should appreciate the pressures which judges operate under in terms of the workload which they handle. Such appreciation is important because the legal practitioner in turn advises his or her client on the extent and possible length of delay that a litigant may expect to pass before a reserved judgment is handed down. The follow up letter by the applicant's legal practitioners in this matter coming less than a month after the date that judgment was reserved, was in the premises a rushed one and may mistakenly be construed as seeking to exert undue pressure upon a judge. I have however not been pressured to write this judgment by the rushed letter.

In this application, the applicant seeks the following order as set out in its draft order which reads as follows:

"It is ordered that:

1. The eviction of the applicant and its employees, agents or assigns from and out of the workers' compounds at a homestead and certain premises called Muwonde Lodge at High Syringa, Triangle be and is hereby declared to be unlawful and is set aside.
2. The 1st to 5th respondents and all those claiming occupation through them shall immediately vacate the said worker compounds at the said homestead and premises known as Muwonde lodge and 7th respondents be and is hereby ordered and directed to evict them from same and restore vacant possession and occupation of same to the applicant and its employees, agents or assigns.
3. The 1st to 5th and 7th respondents shall jointly and severally the one paying the others to be absolved pay the costs of suit in this matter on an attorney and client scale."

The background to this application is as follows:

On 20 November 2015 MANGOTA J determined an application in which the first – fifth respondents herein were the applicants and the applicant herein with two others were the respondents. The case reference is HC 10771/14. MANGOTA J granted an order as follows:

"It is ordered that:

1. The deductions being made by the 1st and 2nd respondent on the sugar can deliveries made by applicants are unlawful and shall forthwith cease.
2. 1st and 2nd respondent shall forthwith reimburse applicants the sum of $54 098-89 being the sums of money deducted from the deliveries made by them.
3. 1st and 2nd respondent shall forthwith vacate Lot 3A of Triangle Ranch in the district of Chiredzi being portions allocated to applicants including the farmhouse failing which the Sheriff of Zimbabwe or his lawful Deputy is authorized to evict them without notice.
4. 1st and 2nd respondent shall bear costs of suit on a higher scale."

On 27 November, the applicant herein together with the second respondent in case No. HC 10771/14 noted an appeal against the whole of the judgment of Mangota J. The appeal was noted under case no. SC665/15. I have perused the Supreme Court record in order to be in the clear as to the fate of MANGOTA J's order and to then determine the extent, if any, to which it bears on the matter before me.

I do not purport to nor should I be understood as making any pronouncement of the Supreme Court appeal. Indeed I have no jurisdiction to do so. I however can and will set out the material observations I made upon a perusal of the Supreme Court record. The appellants and respondents executed a deed of settlement signed on their behalf by their respective legal practitioners on 8 March 2016. The Deed of settlement aforesaid is the same as the copy filed in this application as annexure C2 to the founding affidavit herein. There are a number of correspondences between the parties' legal practitioners concerning the fate of the appeal in the light of the Deed of settlement. The applicant herein took the position that the deed of settlement amounted to a compromise, hence rendering the appeal redundant. The respondents took the view that the deed of settlement fell away on account of the applicant's failure to comply with its terms. Again I do not make any findings on the positions taken by the parties. It suffices that I will be guided by the last correspondence in the Supreme Court record. The last correspondence on record is a letter dated 1 June 2016 by the Supreme Court Registrar addressed to Scanlen & Holderness, the appellant's legal practitioners who are the applicant's legal practitioners in this application before me. The Registrar advised therein that the appeal No. SC 665/15 had lapsed and been deemed dismissed for failure by the appellant to file heads of argument. The Registrar also advised in the letter that the Deed of Settlement had fallen away on account of the reported failure by the appellants to comply with its terms.

As I have already indicated, my interest in perusing the Supreme Court record lay in appraising myself of the fate of MANGOTA J'S order which was appealed against to the extent that this may turn out to be relevant to the application before me. I therefore proceed with my determination on the understanding that the order of MANGOTA J remains extant following the dismissal of the appeal as advised by the Supreme Court Registrar.

For purposes of this application, para 3 of MANGOTA J's order is relevant. In terms thereof the applicant herein and another were ordered to vacate Lot 3A of Triangle Ranch "being

portions allocated to the applicants including the farm house failing which the Sheriff of Zimbabwe or his lawful deputy is authorized to evict them without notice."

The respondents herein instructed the seventh respondent to carry out evictions on Lot 3A of Triangle Ranch pursuant to MANGOTA J'S order. The applicant avers that before the evictions, it occupied and possessed certain worker compounds which were occupied by its employees. In addition the applicant also allegedly occupied a lodge called Muwonde Lodge. The applicant complains that the evictions were wrongful and not sanctioned by law in so far as MANGOTA J's order did not speak to the eviction of the applicant from the workers' compounds and the lodge. The applicant averred in its founding affidavit that not only does the lodge stand outside the portions of land allocated to the first - fifth respondents, the worker's compounds do not constitute outbuildings to the farm house nor are they located on land which this court through MANGOTA J'S order ordered that it be vacated by the applicant.

I have perused the record of proceedings HC 10771/14 and in particular the writ of ejectment which the Registrar issued on 25 November 2015. The writ directed the Sheriff to evict the applicant herein, its co-respondent and all persons claiming occupation through them from "Lot 3A Triangle Ranch and in particular portions of the farm allocated to the applicants" by the third respondent (6^{th} respondent herein) including the farmhouse. The applicant or those claiming rights of occupation through it was evicted from disputed portions of land. This dispute now forms the basis of this application.

Apart from impugning the eviction process on the basis that the compounds from which the applicants workers were evicted did not fall within the ambit of MANGOTA J's order, the applicant also averred that the writ was irregularly issued because the applicant's appeal was still pending before the Supreme Court on the date of issue of the writ as well as on the date that the seventh respondent carried out the evictions on 6 April 2016. The applicant averred that the evictions were therefore unlawfully carried out because MANGOTA J's order had been suspended by the noting of the appeal. The applicant also attached correspondence addressed to the Law Society of Zimbabwe by the applicants' legal practitioners complaining about the alleged unethical conduct of the first - fifth respondents' legal practitioners in causing the issue of the writ of ejectment in regard to a judgment order which had been appealed against and therefore stood suspended. The applicant also complained in its founding affidavit that it had been extorted

of US$68 098-59 which it was made to pay in consequence of the execution of a writ of ejectment. The applicant averred that it had filed separate court proceedings to recover the money from the first - fifth respondents and their legal practitioners. No doubt, that matter will be dealt with in this court and no comment needs be made on the allegations except to just note them.

The first - fifth respondents vehemently opposed the application. They averred that the writ of ejectment was issued before the applicant had noted its appeal against the judgment of MANGOTA J. This contention is correct because the writ of ejectment was issued by the Registrar of this court on 26 November, 2015 whilst the applicant's appeal no SC 665/15 was issued out of the Supreme Court on the following day on 27 November, 2017. I do not however propose to split hairs by addressing argument on whether or not it was procedurally proper for the respondents to levy execution because clearly the law is clear. The proper noting of the appeal suspended the operation of the judgment of MANGOTA J. The writ of ejectment was in the same vein suspended by the noting of the appeal. The judgment could only be executed upon following the determination of the appeal.

Dealing with the determination of the appeal, I have already indicated that I will be guided by the Supreme Court Registrar's letter dated 1 June, 2016. The position taken is that the appeal stands dismissed or abandoned for failure to file heads of argument which should have been filed by the applicant herein as appellant in the appeal within 15 days calculable from 16 February, 2016 when the applicant's legal practitioner received the notification letter dated 11 February, 2016 calling upon the applicant herein, as appellant to file heads of argument. A copy of the letter is attached to the respondent's opposing papers as Annexure E. The question of whether there have been procedural issues or irregularities in the dismissal of the appeal as communicated by the registrar is out of my jurisdiction. MANGOTA J's judgment was therefore holding and in force when execution was effected on 6 April, 2016.

The issue I must determine was whether the seventh respondent by carrying out evictions at Muwonde Lodge and at the worker's compounds did so lawfully or was so authorised under the judgment of MANGOTA J. When I heard this matter, counsel for the first to fifth respondents undertook to provide by filing of record a copy of the reasons for judgment prepared by MANGOTA J. The undertaking was not fulfilled. I will give counsel the benefit of pressure of

other commitments in not filing the judgment as promised. I was however able to find the judgment upon perusal of the appeal record. The judgment is in fact case No. HC 911/15. It also occurs to me that the applicant who seeks to argue that the evictions carried out by the seventh respondent on the instructions of first to fifth respondents fell outside the ambit of MANGOTA J's order to the extents complained of should have filed or provided the judgment in question. The general rule in any event, is that he, who avers, must prove. The burden to prove that the evictions carried out at the lodge and workers compounds fell outside the ambit of MANGOTA J's judgment lay on the applicant.

The first question which must be addressed is the situation of the workers compound and the lodge. Do they fall within any of the portions of the subdivisions which were allocated to the first to fifth respondents? If they do, did MANGOTA J in his judgment make specific reference to them and make orders relative to them explicitly or impliedly. If yes, the matter must end there. If the answers to the above questions are in the negative, the question becomes whether or not the seventh respondent in executing on the writ of ejectment did so lawfully or as sanctioned under the judgment of MANGOTA J.

It has been submitted by the first to seventh respondents counsel in his heads of argument that the issues being raised by the applicant are covered by the doctrine of estoppel in that only the Supreme Court can order a reopening of decided issues or hear evidence on them because the Supreme Court deals "with both the dictates of a judgment and its effects". Reliance was placed on the decision of the Supreme Court in *Willowvale Mazda Motor Industries (Pvt) Ltd* v *Sunshine Rent-A-Car (Pvt) Ltd* 1996 (1) ZLR 415 (SC). The Supreme Court quoted an English case of *Mills* v *Casper* in which Lord Diplock reasoned that it was not acceptable or open to a party to civil proceedings to make an assertion of fact or legal consequences of facts where the same was decided upon by another court of competent jurisdiction and holds to be incorrect and then seek to rely on the assertion to further or found such party's cause of action or defence unless the party places before the court other material which was not available before that court and which material could not have been availed through the exercise of due diligence by the party now seeking to have the correctness or otherwise revisited.

As I understand the first to fifth respondents' argument, their counsel was simply seeking to advance the argument that, the issue before me was decided by MANGOTA J and therefore

should be passed off as *res judicata*. Neither MANGOTA J nor myself would have power to revisit the issue nor review a decided matter. Indeed once a matter has been decided by a competent court and such court hands down its judgment, the court or judge becomes *functus officio*. *Res judicata* simply means that the issue or thing has been decided and *functus officio* denotes that the function of the court in regard to the decided matter has been performed. If a court pronounces its judgment, it has done its job and cannot alter, supplement or alter its judgment save as may be provided by law.

I do not think that the issues of estoppel, *res judicata* and *functus officio* are the material issues on which my determination should be based. The issues to which I must find answers to the questions I have listed have more to do with the powers of this court to regulate its process. A writ of ejectment is a process of court. The fact that this court has inherent power to regulate its process is a common cause accepted principle of law. Section 176 of the Constitution gives amongst other powers therein listed to this court, the Supreme Court and Constitutional Courts, the power to regulate their own process. Therefore if in the process of enforcing a judgment of this court, a process as in this case, a writ of ejectment, the Sheriff goes beyond the parameters of what the judgment has ordered, this court has power to correct the anomaly. It cannot properly do so without going back to its judgment to appreciate the nature and extent of the order or judgment it granted and be able to determine whether or not the Sheriff has given effect to the court's order or exceeded it as the case may be. There are countless instances in which the court has suspended or stayed execution. In *casu*, the application is about the power of the court to restore the status *quo* where the process of enforcement of the judgment has exceeded the scope of the judgment.

The first to fifth respondents are the ones who caused the issuance of the writ of ejectment and it is them as opposed to the Sheriff who are ultimately liable for any injury to the party against whom execution is levied if the process of execution or writ is set aside or otherwise ruled to be irregular. I therefore agree with the submissions by applicant's counsel that if the court finds that in the execution of the writ of ejectment, the seventh respondent went beyond the scope of MANGOTA J's judgment, then the first to fifth respondents must be held to have resorted to self-help and the dicta of MAFUSIRE J in *Grandwell Holdings (Pvt) Ltd* v *Minister of Mines Development and Ors* HH 193/16 that the courts should not countenance

self-help and that the status *quo ante* must be restored where this has happened is apposite and applicable to the case before me.

I start by dealing with the lodge. The applicant has made a very elementary mistake of just annexing documents and placing them before the court without explanation. The deponent to the founding affidavit stated as follows in para 9 thereof

> "9. Conspicuously the order does not authorise the eviction of the applicant from the worker compounds neither does it speak to the eviction of the applicant from the lodge which is not on any of the portions allocated the first to fifth respondent. The compounds are not outbuildings of the main house. Further and in any event the worker compounds are not located on the land which the applicant was directed to vacate. A copy of the map showing the respective location of both the lodge and worker compounds is attached hereto marked 'B'".

I have considered the said map marked B. It is a photocopy. Endorsed on it in hardly readable content are inscriptions in long hand written "X – Lodge" and "XX – compound & homestead." The map purports to depict the subdivision layout of Lot 3A of Triangle Ranch. It has been subdivided into 8 subdivisions. Much as I stretched my eyes I could not find point "XX" on the map. With much difficulty I was able to identify point "X" although it is feint. It appears to be within subdivision 1. The subdivisional map or diagram was not produced in the court application before MANGOTA J. It is the duty of counsel to ensure that all the papers which are filed on behalf of a litigant are clear. Where counsel fails to do so, the litigant whose papers are not legible should not cry fouls if the court disregards the ineligible document as being of no evidential value.

The map aforesaid does not show the point which the applicant purports to have marked "XX", being the compound. The map is therefore not of any assistance in showing whether the workers compound falls within or outside the subdivisions to which MANGOTA J's judgment relates. The respondents take the position that the compound and the lodge fall within the subdivisions to which MANGOTA J's judgment relates. In paragraph 1.6 of the opposing affidavit of the first respondent, he states in reference to case No. HC 1077/14.

> "1.6. Applicant' position was that the farm house, the compound and lodge were not part of Lot 3A. That position was advanced in the opposing affidavit filed on behalf of applicant and was persisted in in argument."

The respondents just bunched affidavits which were filed in case No HC 10771/14 without referring to the specific affidavit and paragraph on which reliance is placed for the

contention that the applicants averred before MANGOTA J that the lodge and compound fell outside the subdivisions in issue. The respondents expect the judge or court to sift through the affidavits and identify the paragraph where the applicant allegedly made the deposition. Even in the heads of argument, the respondents do not assist the court by referring to the specific mention of their assertion. Such manner of pleading is atrocious. I make the same criticism which I have made against the applicant as to the requirement for a litigant to ensure that such litigant places clearly all the facts, documents and information it relies for its case before the court. It is not the duty of a court to sift through bunched up documents and try to piece together a trail of evidence to build a litigant's case or defence. What however emerges from the opposing papers is that the respondents argues that the lodge and compound fall within the subdivisions allocated to the respondents which position is tangential to the applicant's position. They also attached a copy of the letter dated 9 January 2015 from the Acting Chief Lands Officer for Masvingo Province addressed to Tongaat Hullets Zimbabwe in which the Acting Chief Lands Officer writes that the lodge and houses in the compound are on gazetted state land. The heading of the letter reads "Allocation of houses on Lot 3A of Triangle (High Syringa) to 12A2 Farmers." The letter was not produced in the application before MANGOTA J and again I cannot make much out of it without further elaboration on what exactly it refers to more particularly given that it refers to 12 farmers yet I have before me five respondents who occupy various subdivisions on the Gazetted Land. I have not seen anywhere in the papers where the respondents state with exactitude that the lodge and compound fall within a specific subdivision allocated to a specific respondent.

From my above analysis, I am left unconvinced that I have been presented with evidence which satisfied me on a balance of probabilities that the lodge in question and the workers compounds fall within the subdivisions allocated to the first to the fifth respondents. Reverting to the judgment of MANGOTA J, the relevant operative part of judgment No HH 911/15 reads as follows:

> "The court is satisfied that the applicants proved their case on a balance of probabilities. Judgment is, in the premises, entered for the applicants with costs on the higher scale against the first and second respondents."

Paragraph 3 of the court order as issued (see annexure A) to the application reads as follows:

> "3. 1st and 2nd respondents shall forthwith vacate Lot 3A of Triangle Ranch in the district of Chiredzi being portions allocated to applicants including the farm house failing which the Sheriff of Zimbabwe or his lawful Deputy is authorized to evict them without notice.

A reading of the whole judgment of MANGOTA J does not make specific mention of the lodge and compound. On p 2 of the cyclostyled judgment, MANGOTA J observed as follows:

> "The first respondent stated that the farm which is the subject of this application was/is a wholly owned subsidiary entity of itself. It insisted that the house which the third respondent leased to the third applicant and the compound were outside the property which was allocated to the applicants. The house and the compound, it is said, were vital to the operations of the respondents. It stated that any lease which described the farm house and the compound as having been within the property which was allocated to the applicants was erroneous."

MANGOTA J further stated as follows:

> "The parties are *ad idem* on the position that the respondents had to, and did actually, make way for the applicants' settlement on the farm. The court will for the avoidance of doubt order the eviction of the respondents. It will do so in the spirit of ensuring that the parties would be allowed to live side by side without any interference-real or perceived by one party in the affairs and /or operations of the other. The order is only for the stated purpose. It is, in the court's view, not a miscarriage of justice to order eviction of a party which has already evicted itself from the other party's property.
>
> The issue which the respondents contested in a fairly serious manner is that of the farm house which the third respondent leased to the third applicant. The first and second respondents stated that the house fell outside the farm which was allocated to the applicants."

I have not been able to find anywhere in MANGOTA J's judgment where he made a specific finding with respect to the workers compounds or that they were part of the farmhouse or lay within land allocated to the respondents. I have already observed that none of the respondents in the opposing affidavit claimed that the workers compounds and the lodge lay in any of the subdivisions allocated to them. The respondents without doubt have a right to vacant possession and use of the portions of land or subdivisions allocated to them, in their individual capacities. They do not have any rights to the whole of the gazetted farm. The sixth respondent would have a right to demand that the whole of the farm be vacated. MANGOTA J made an order of eviction *ex abundata cautela*. He made a specific finding that the applicants had already vacated the portion of the farm to which the application No. HC 10771/14 related to. If this was the position, unless the applicants had re occupied the land, the writ of ejectment from land already vacated would not have been necessary. If there was no re-occupation but the seventh respondent went on to carry out evictions, the evictions could not have related to land already

vacated as per MANGOTA J's finding. The probabilities that the evictions were carried out from land and property not covered by the order of MANGOTA J are therefore not fanciful but real.

I now turn to the order sought. I am in agreement with the respondents' submission that the nature of the disputes of fact revealed by the parties not being *ad aidem* as to whether the compound and lodged lay within the respondents allocated subdivisions or indeed within Lot 3A of Triangle Ranch cannot be resolved on the papers as they stand. I am equally not able to hold that the seventh respondent complied with the order of eviction or went beyond it.

Before I conclude my judgment, it is clear to me that the parties did not read the cyclostyled judgment of MANGOTA J No. HH 911/15 before filing the application and similarly the opposing papers and heads of argument. None of the parties or their counsel attached a copy of the said judgment nor referred to it. Papers and arguments were tailor-made to suit the parties' interpretation of the court order, Annexure 'A' to the founding affidavit. The parties then went on to surmise on MANGOTA J's findings of fact and in some instances misrepresented the learned judge's findings yet reasons, for judgment were available or if they were not then available the parties could have requested for them.

I have already indicated that the doctrines of *functus officio* and (*res judicata*) are not intended to and do not debar the court from reading through its judgment to ascertain what it ordered in circumstances where a complaint has been made by one party that its rights have been infringed on the purported strength of an order which the court did not make. The doctrine as I understand it, is that the court cannot alter or correct its decision, not that it cannot clarify its order where parties are not agreed as to the purport or substance of the order. Rule 449 of the High Court Rules 1971 provides a ready exception. There is also ample authority that a *functus officio* court can revisit its judgment in limited circumstances. In the case *Firestone South Africa (Pty) Ltd* v *Genticuro AG* 1977 (4) SA 298 (A) at 306, the learned judge of appeal stated thus:

> "The general principle, now well established in our law, is that, once a court has duly pronounced a final judgment or order, it has itself no authority to correct, alter or supplement it. The reason is that it thereupon becomes *functus officio*, its jurisdiction in the case having been fully and finally exercised, its authority over the subject matter has ceased ….".
>
> There are however a few exceptions to that rule which are mentioned in the old authorities and have been authoritatively accepted by this court….".
>
> The exceptions which have been recognised as set out in the firestone case (*supra*)

were listed as being four in number. They are:

> "(i) in respect of accessory or consequential matters e.g costs or interest on a judgment debt that the court overlooked or inadvertently omitted to grant.
>
> (ii) in order to clarify if meaning is obscure, ambiguous or uncertain, provided it does not alter the sense or substance of the judgment or order.
>
> (iii) to correct a clerical error, arithmetic or other error in expressing the judgment or order but not altering its sense or substance.
>
> (iv) making an appropriate order for costs which had not been argued, the question of costs depending on the courts discretion on the merits of the case."

In this case it is my view that it was necessary to revisit the judgment of MANGOTA J because the parties were not agreed as to whether the learned judge's order of eviction extended to the lodge and compound.

Turning to concluding my judgment, I am not persuaded that the factual disputes which I cannot resolve on the papers warrant an order of dismissal of the applicant's claim as prayed for by the respondents. The respondents themselves have not satisfied me that the evictions were carried out in accordance with MANGOTA J's order. They aver so and should have assisted in disabusing me of the doubt which I entertain because MANGOTA J held that the applicants had already evicted themselves and he gave the order for purposes of endorsing a situation already resolved. The respondents did not justify why a writ of ejectment became necessary to be issued if the respondents were already enjoying vacant possession.

I have already pointed out to an unsatisfactory feature of how the parties approached the matter in filing unnecessary bundles of paper to advance their claims or defences yet the judgment HH 911/15 which defined the parties rights and obligations was available or could have been availed. Perhaps if parties had cared to acquaint themselves with judgment HH 911/15, they could have resolved or attempted a resolution of their dispute in a different manner than rushing to issue writs leading them to come to court.

In my judgment, a dismissal of the case on account of the existence of a factual dispute does not appeal to me to be justified and neither is an order of absolution from the instance. The dispute between the parties should be brought to finality and this is possible. A process of this court has in the course of its enforcement given rise to the dispute. The law as clearly adumbrated by MANGOTA J is very clear that once land has been gazette, it vests in the State. Lot

3A of Triangle Ranch was gazetted. In consequence of the gazetting, the sixth respondent allocated subdivisions of the gazetted land to the respondents. MANGOTA J found that the applicant had already vacated the gazetted land and issued an order of eviction for certainty or *ex-abundanta cautela*. The eviction order was specific to those portions of Lot 3A aforesaid which had been allocated to the respondents herein. The simple question is, in which of the allocated portions does the lodge and the workers compound lie? If the two lie in any of the allocated portions, the evictions carried out by the seventh respondent should stand. If one or other or both properties lie outside the portions allocated to any of the first – fifth respondents, the evictions must be held to have been unlawful and *restituto integrum* or the *status quo ante* the eviction should be restored.

One of the material pronouncements made by MANGOTA J in HC 911/15 was that the sixth respondent who allocates land under the Land Reform and Resettlement is not the person on the ground where allotees take occupation of the land. The learned judge stated that the sixth respondent acts through his or her officials at district and provincial levels. The officials range from district lands officers up to the district administrators. There are also land Committees and it is these officials whom the learned judge referred to as sixth respondents 'foot soldiers' who will or "… are supposed to know, from the title deed of the acquired farm and from the farm areas map which is, more often than not, attached to the title deed, what structures, rivers, hills and/or mountains are on the acquired land". In *casu*, the respondents attached a letter by one such 'foot soldier'. F Chimbishi, the Acting Chief Land Officer for Masvingo Province. I have already commented on the letter and noted that it does not assist the respondents' argument or the court as it does not make reference to subdivisions allocated to the respondents.

I determine this application as follows:

1. The application be dealt with through action procedure.
2. The applicants founding affidavit and annexed documents shall stand as the summons and declaration.
3. The first – fifth respondents' opposing affidavits and annexures shall stand as the plea.
4. The applicants answering affidavit shall stand as the replication.

5. The matter be referred for pre-trial conference before a judge of this court to be dealt with in terms of order 26 r 182 (4) of the High Court Rules; 1971.
6. It will be up to the pre-trial conference judge, failing resolution of the dispute, to refer the matter to trial and give such directives as the judge may consider necessary in relation to the filing of any further papers including ordering discovery, so that the trial judge may properly determine whether the lodge and workers compound from which the seventh respondent enforced the writ of ejectment fall within or outside the subdivisional portions of Lot 3 A Tringle which were allocated to the first – fifth respondents as ordered in para 3 of the court order of MANGOTA J dated 20 November, 2015 in case No. HC 10771/14.
7. The issue or question of costs is reserved for determination upon the resolution of this matter.

Scanlen & Holderness, applicant's legal practitioners
Machokoto & Partners, 1st – 5th respondents' legal practitioners