

**REPORTABLE** (10)

(1) **TBIC INVESTMENTS (PRIVATE) LIMITED** (2) **PAUL ISAU  
UPENYU CHIDAWANYIKA**

v

(1) **KENNEDY MANGENJE** (2) **MINISTER OF LANDS** (3) **RURAL  
DEVELOPMENT** (4) **THE REGISTRAR OF DEEDS** (5) **ATTORNEY  
GENERAL OF ZIMBABWE** (6) **THE COMMISSIONER OF POLICE**

**SUPREME COURT OF ZIMBABWE  
GWAUNZA JA, GOWORA JA & BHUNU JA.  
HARARE, 31 JANUARY 2017 & MARCH 1, 2018**

*T. Mpofo*, for the appellants

*S.M. Hashiti*, for the first respondent

*E. T. Matinenga*, for the second respondent

**BHUNU JA:** This is a hotly contested appeal against the whole judgment of the High Court sitting at Harare, and delivered on 30 October 2013. The epicentre of the dispute is a certain piece of land in the Goromonzi District known as the Remaining Extent of Stuhm measuring 583, 1360 hectares in extent registered in the name of TIBIC INVESTMENTS (PVT) LTD under Deed of Transfer 1724/2009. TIBIC INVESTMENTS (PVT) LTD is an indigenous company in the sense that its shareholders and directors are indigenous citizens of this country. The historical background and factual basis of the case is by and large common cause.

The genesis of the dispute is that in 1970 the late Paul Michael Henry Reimer obtained ownership of a certain piece of land in the District of Goromonzi known as the Remaining extent of Stuhm measuring 1 074.7410 hectares in extent, under deed of grant

1262/70. Paul Reimer does not appear to have bought the land as there is no mention of any money having exchanged hands. His son Cecil Michael Reimer in due course inherited the said piece of land from his late father under deed of Transfer 3032/87.

Starting from 1997 to 2009 Cecil Michael Reimer began to subdivide the main block of the remaining extent of Stuhm measuring 1074. 7410 hectares in extent into 3 lots which he sold as follows:

| <b>DATE</b>          | <b>LOT SOLD</b> | <b>BUYER</b>                       | <b>HECTERAGE</b> | <b>DEED OF TRANSFER</b> |
|----------------------|-----------------|------------------------------------|------------------|-------------------------|
| 1997                 | 2               | Darnall Investments                | 412.1091         | 497/97                  |
| 1998                 | 3               | Douglasdale (Pvt) Ltd              | 79.4959          | 9247/98                 |
| <b>2009</b>          | <b>1</b>        | <b>TIBIC Investments (Pvt) Ltd</b> | <b>583.1360</b>  | <b>1724/09</b>          |
|                      |                 |                                    | <b>1,074.741</b> |                         |
| <b><u>Total.</u></b> | <b>3 Lots</b>   |                                    |                  |                         |

He however sold the disputed lot one in 2009 in circumstances where Government had already issued a preliminary notice to compulsorily acquire the disputed land under **General Notice 405A of 2000** published in the **Extraordinary Government Gazette of 25 August, 2000**.

The preliminary notice reads:

“NOTICE is hereby given, in terms of subsection (1) of section 5 of the Land Acquisition Act [Chapter 20:10], that the president intends to acquire compulsorily the land described in the schedule for resettlement purposes.

A plan of the land is available for inspection at the following offices of the Ministry of Lands, Agriculture and Rural Resettlement between 8 a.m. and 4 p.m. from Monday to Friday other than on a public holiday on or before the 24<sup>th</sup> of September, 2009 –

140. Deed of transfer 3032/87, registered in the name of Cecil Michael Reiner , in respect of certain piece of land situate in the district of Goromonzi , being the remaining extent of Stuhm, measuring one thousand and seventy- four, comma seven four one zero. (1 074, 7410) hectares.”

The same notice was re-gazetted under General notices 298A of 2003 and 323 of 2003. In all the 3 notices the extent of the land earmarked for acquisition was given as 1 074.741 hectares. The gazetted land had however been subdivided into 3 lots. Considering that it had acquired the whole land, the acquiring Authority offered lot 1 to the first respondent Kennedy Mangenje as compensation for his farm which it had compulsorily acquired and distributed to other beneficiaries. The first respondent accepted the offer.

The offer letter addressed to the first respondent and dated 7 August 2006 reads in Part:

“Dear Sir/Madam

Re: OFFER OF LAND HOLDING UNDER THE LAND REFORM AND RESETTLEMENT PROGRAMME. (MODEL A2 PHASE II)

1. The Minister of State for National Security, Lands, Land Reform and Resettlement in the President’s Office has the pleasure in informing you that your application for land under Model A2 Scheme has been successful.
2. You are offered Subdivision 1 of R/E of STUHM in GOROMONZI District of MASHONALAND PROVINCE for agricultural purposes. The farm is approximately 534.00 hectares in extent.
3. The offer is made in terms of the Agricultural Land Settlement Act [Chapter 20:01] whose provisions you are advised to acquaint yourself with. Conditions that go with the offer are attached.”

In summary what was gazetted was the whole of the original Remaining Extent of Stuhm. However, lots 2 and 3 had already been sold and ceased to be part of the original block of land. Lot 1 thus remained as part of the remaining extent of the whole original block of land. It stands to reason that when the acquiring authority gazetted the whole of the original Remaining Extent of Stuhm, lot 1 being the remaining fraction of the original block was equally gazetted in tandem as part of the whole. That reasoning is anchored on the well-known maxim that the greater includes the lesser, which principle is of universal application. See *City of Lakerwood v Plain Dealer Publishing Co.* [1988] USSC 123. In other words the gazetting of a whole piece of land includes the gazetting of a fraction of that land.

The severed lots 2 and 3 were not validly gazetted because they had ceased to be part of the original block and the new owners were not given notice of the intended compulsory acquisition.

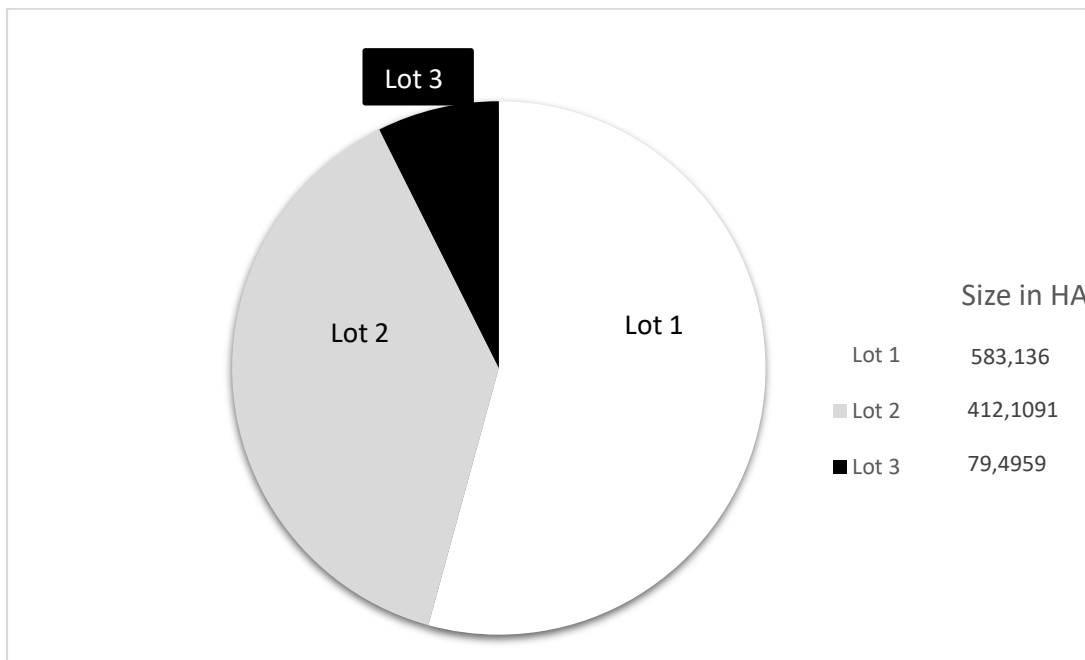
The same cannot however, be said of lot I which remained as a fraction of the whole original Remaining Extent of Stuhm which Cecil Reimer continued to hold under deed of transfer 3032/87. Just to draw an analogy, if the Sheriff had given notice to attach the 3 lots under the mistaken belief that they all belonged to Cecil his notice and attachment of block I could not be foiled simply because lots 2 and 3 belonged to some other people. The Sheriff will undoubtedly be entitled to attach the remaining lot 1 belonging to Cecil Michael Reimer. By the same token, once the acquiring authority had gazetted the whole original piece of land, it was entitled as of right to acquire any fraction of that land that was legally subject to acquisition in terms of the Constitution.

The appellant sought to attack the first notice No. 405A of 2000 on the basis that it had expired in terms of the provisions of the Land Acquisition Act. The same applies to the second and third notices 298A of 2003 and 323A of 2003. It also sought to argue that the land gazetted does not exist simply because the gazetted land is 1 704.741 hectares in extent whereas the land in dispute is 583.136 hectares in extent.

The disputed land in respect of which notice to compulsorily acquire was given can easily be identified by employing the blue pencil rule to excise lots 2 and 3 from the whole, leaving the land in dispute intact, being the Remaining extent of Stuhm measuring 583.136 Hectares held by Cecil Michael Reimer under deed of transfer 3032/1987. The blue pencil rule is a common law doctrine which allows a court to sever an unenforceable portion of a

contract so as to enforce the remaining enforceable portion of that contract. Although this is not a contractual dispute I find the concept useful in this case to separate that which is enforceable from that which is not enforceable.

Graphically, that conception in this case can be plotted and visualised as follows:



Cecil Michael Reimer sowed the seeds of severability or divisibility when he subdivided the original land into separate and distinct 3 lots which could easily be identified as shown above. What emerges quite clearly is that, the severance of lots 2 and 3 from the whole block of land cannot divest lot 1 of its identity. It remains intact and its gazetting remains extant despite the severance of lots 2 and 3 from the whole. In the result, the conclusion that lot 1 which is the land in dispute was identified and gazetted is beyond contest. What is in dispute is the correctness and validity of the process of identification and gazetting of the land for purposes of compulsory acquisition.

The disputed land was properly identified and gazetted as part of the whole original Remaining Extent of Stuhm measuring 1 704.741 hectares in extent. It is therefore, anomalous for the appellants to argue that the land in question does not exist when the first appellant bought it from Michael Reimer and had it registered in its name under the same description being the Remaining Extent of Stuhm measuring 583.136 situated in the district of Goromonzi. By the same token, the second appellant cannot dispute the existence of the disputed land when he leased and occupied it under the same description.

There is therefore no merit in the appellants' argument that the land in question was not properly identified and gazetted. For that reason the finding by the court *a quo* that the disputed land exists is beyond reproach.

There can however, be no denying that the process of identifying the disputed land for purposes of compulsory acquisition was fraught with errors including the spelling of the name of the previous owner of the land, its exact size and extent as correctly found by the court *a quo*. These errors and more were not peculiar to this particular piece of land. The mistakes were many and varied relating to various other pieces of land, thereby threatening to derail the entire Land Reform Programme.

In order to protect and keep the Land Reform Programme on course, Parliament in its wisdom amended the former Constitution. The intention of the legislature was to automatically validate the acquisition of all agricultural land identified and listed under schedule 7 for purposes of the Land reform programme on or before 8 July 2005 regardless of any errors or mistakes that may otherwise have nullified the acquisition in the normal run of things.

The disputed land was acquired under the former Constitution of which s 16B (2) as amended provides as follows:

“(a) All Agricultural land –

(i) That was identified on or before the 8<sup>th</sup> July 2005, in the government Gazette or Gazette Extraordinary under section 5 (1) Of the Land Acquisition Act [Chapter 20:10], and which is itemized in Schedule 7 being agricultural land required for resettlement purposes is acquired by and is vested in the State with full title therein with effect from the appointed date.

...

(5) Any inconsistency between anything contained in –

(a) a notice itemized in schedule 7 ; or

(b) a notice relating to land referred to in subsection (2) (ii) OR (iii); and the title deed to which it refers or is intended to refer, and any error whatsoever contained in such notice, shall not affect the operation of subsection (2) (a) or invalidate the vesting of title in the State in terms of that provision.”

The effect of the above section was to revive, resuscitate and validate the acquisition of all identified agricultural land listed in the 7<sup>th</sup> schedule for resettlement purposes prior to 8 July 2005 regardless of any errors or withdrawals in the acquisition process. No limitation can be imposed on the acquisition process once the land is shown to have been gazetted and listed in the 7<sup>th</sup> schedule prior to 8 July 2005.

The language used in s 16B (2) of the former Constitution is clear and unambiguous admitting no ambivalent interpretation. The only meaning to be ascribed to the section is that once land is gazetted and listed in schedule 7 it automatically stands acquired by the State with full title by operation of law. The mere fact that the notice was at one time withdrawn or expired is irrelevant.

Applying the law to the facts, it is plain that the disputed land was identified and a preliminary notice of intention to acquire was gazetted on 25 August 2000. The same preliminary notice was re-gazetted twice in 2003. The land in dispute was duly itemised in schedule 7 of the Government gazette according to the prevailing law. The land, having been identified and itemised in schedule 7, it fell squarely within the ambit of s 16B (2) of the former Constitution. By virtue of s 16B (5) of the former Constitution, the fact that at one time the notice expired or was withdrawn and that it was beset by other errors complained of by the appellant were of no force or effect. They could not invalidate or adversely affect the vesting of title in the State whatsoever. Credible evidence was proffered before the trial court that upon acquisition the original title deeds were endorsed signifying the perfection of State acquisition of the disputed land. The endorsed original title Deeds however mysteriously disappeared in suspicious fraudulent circumstances to facilitate transfer for the benefit of the appellant.

Once the land had been identified and itemised under schedule 7, title to the land automatically vested in the State with the result that it automatically became State property by operation of law. In consequence whereof the previous owner was divested of his title to the land and stripped of all rights of ownership to the acquired land thereto.

The learned judge in the court *a quo* was therefore, correct when he remarked at page 24 of his judgment that:

”TBIC obtained transfer of the remaining extend of Stuhm only in 2009. Until it did, it had no real rights over it. But most importantly Reimer who purported to transfer the property to it had lost all rights over the property, save the rights to a fair compensation. By 3 November 2005 the property had become State land by virtue of s 16B of the then Constitution.“



For that reason Deed of Transfer No. 1724/09 dated 18 March 2009 in favour of TBIC (Pvt) Ltd was a nullity at law and of no force or effect. That factual finding and interpretation of the law cannot be faulted at all as it finds support in a plethora of precedents, chief among them, *Agro Chem Dealers (Pvt) Ltd v Gomo & Others* 2009 ZLR 255 where GOWORA J, as she then was made it clear that:

“... No person who is not the owner can transfer ownership in anything whether or not such transferor was acting in good faith or *mala fide*.”

That interpretation and conclusion of the law finds solid support from RH Christie, *Business Law in Zimbabwe*, 2<sup>nd</sup> ED Juta & Co Ltd at 149 where the learned author states that:

“An owner whose property has been sold and delivered without his consent remains the owner, as the seller cannot pass title that was not his.”

On the authorities, a buyer who acquires property from a seller who is not the owner and without valid mandate to sell the property, as happened in this case, acquires defective title which is a nullity at law. A nullity is an event that never happened in the eyes of the law. As Reimer had lost all rights of ownership to the land in dispute, the sale of the land to TBIC (Pvt) Ltd was patently unlawful and a nullity at law. No valid title can be founded on an illegality. In *Guoxing Gong v Mayor Logistics (Pvt) Ltd* SC –2–2017 at p 6 this Court made it abundantly clear that anything done contrary to the law is a nullity.

To make matters worse, as correctly found by the learned Judge in the court *a quo*, the appellant obtained dubious title in circumstances where the original title deeds with the endorsement of State title had been fraudulently removed from the Deeds Registry. It is trite that one cannot transfer ownership of rights that he does not have nor can rights be lawfully

transferred through fraudulent means. This is because the law prohibits anyone from deriving benefit from criminality regardless of the origin of the criminal conduct.

I note in passing that the prevalence of fraudulent and corrupt disappearance of records and documents in the Deeds Registry has now reached alarming proportions. This prompted MATHONSI J to lament in the case of *Cosmas Luckson Zavazava and Anor v Tendai Anania Tendere and 2 Ors* HH 740/15 to remark as follows:

“It would appear that conveyancing laws of this country are not fool-proof because fraudsters continue to exploit the weaknesses in the procedure for registration of transfers to defraud innocent property seekers. The leakages in the system have meant that cases of unlawful transfers of immovable property continue to reach the courts with alarming frequency. For how long will these fraudsters, who strut among communities, continue to hold sway, to make a mockery of transfer rules to milk unsuspecting home seekers dry in order to make a dishonest living? These shameless individuals bring the whole process of private ownership of property to disrepute.”

In this case, the fraudulent disappearance of the original Title Deeds dully endorsed with State Title in the Deeds Office could only have benefitted the parties to the illegal sale of the State land in question. The fraudulent transfer was then perpetrated using a copy of the seller’s title Deeds without endorsement of State Title. This was meant to facilitate the bogus transfer of State Land to the appellant.

In the absence of any other credible evidence to the contrary, the only reasonable inference that can be drawn is that the appellant and Cecil Michael Reimer were co-conspirators in the perpetration of the fraud. This uncouth reprehensible behaviour cannot be sanctioned by the courts. That type of criminal conduct discredits both of them as witnesses. It betrays knowledge on their part that the land had indeed been lawfully acquired by the State prior to the sale. Otherwise, why act unlawfully if the deal was clean and above board?

Having lawfully acquired the disputed land, the acquiring authority remained the lawful owner regardless of the unlawful purported sale and transfer of the land to the first appellant. The Acquiring authority was therefore within its rights when it offered the disputed land to the respondent for resettlement purposes. The respondent in turn had the right to accept the offer as he did thereby concluding a valid contract with the acquiring authority. The conclusion that the respondent's Offer Letter is valid and enforceable is in the circumstances beyond reproach

That conclusion of law renders both appellants strangers to the contract between the acquiring authority and the respondent. This brings us to the doctrine of privity of contract. That doctrine restricts the enforcement of contractual rights and remedies to the contracting parties, to the exclusion of third parties. The learned author Innocent Maja in his book *The Law of Contract in Zimbabwe* at p 27 para 1.5.3 graphically explains the doctrine as follows:

“The doctrine of privity of contract provides that contractual remedies are enforceable only by or against parties to a contract, and not third parties, since contracts only create personal rights. According to Lilienthal, privity of contract is the general proposition that an agreement between A and B cannot be sued upon by C even though C would be benefited by its performance. Lilienthal further posts that privity of contract is premised upon the principle that rights founded on contract belong to the person who has stipulated them and that even the most express agreement of contracting parties would not confer any right of action on the contract upon one who is not a party to it.”

The court *a quo* having correctly found that the sale of the land in dispute to the first appellant was a nullity and that the acquiring authority remains the lawful owner of the land in dispute, it follows that both appellants were not privy to that contract. That being the case, the doctrine of privity of contract excluded them from suing for cancellation of the contract between the first and second respondents in the form of the first respondent's offer letter.

The second respondent being the only other contracting party to the Offer Letter swept the carpet from underneath the appellants' feet when he elected not to contest the court *a quo*'s judgment choosing to remain neutral and abide by the court's decision. That in effect means that the only other party privy to the contract has capitulated and is no longer challenging the validity of the first respondent's Offer Letter. For that reason, the learned judge's finding that the Offer Letter issued to the first respondent by the second respondent is valid is unassailable.

By virtue of the landmark decision in the case of *Commercial farmers Union & Ors v Minister of Lands & Ors* 2010 ZLR 576 the courts are enjoined to support the holders of valid offer letters as correctly argued by the second respondent in the court *a quo*. This is in keeping with the time honoured principle laid down in *Barlow and Jones Ltd v Elephant Trading Co.* 1905 TS 67 to the effect that existing rights should not be infringed. Thus in general courts will lean in favour of the enjoyment of rights rather than their extinction.

By virtue of the valid Offer Letter issued to him by the second respondent in his capacity as the acquiring authority, the first respondent has the right to occupy and use the **Remaining Extent of Stuhm In the Goromonzi District Measuring approximately 534, 00 Hectares in extent** as stipulated in the offer letter.

As regards the appellants' right of occupation of the land, the disputed land is gazetted land. Section 3 of the Gazetted Land (Consequential Provisions) Act [*Chapter 20:28*] prohibits and criminalizes the occupation of gazetted land without lawful authority in the form of:

- (a) an offer letter; or
- (b) a permit; or
- (c) a land settlement lease.

It is common cause that both appellants have no lawful authority in the form of an Offer Letter, permit or land settlement lease authorising them to occupy and use the disputed land. Their plea is for the acquiring authority to strip the first respondent of his rights acquired in terms of his Offer Letter and confer them on the first appellant. They argue that the first appellant is an indigenous person and it is not government policy to dispossess one indigenous person of land in order to give it to another.

This Court has already determined that the court *a quo* correctly nullified Cecil Michael Reimer's ownership of the disputed land. It also correctly held that ownership of the disputed land still vests in the second respondent. That being the case, the courts cannot protect the appellant on the basis that the disputed land is owned or occupied by an indigenous person.

Although the first appellant is in occupation of the gazetted land and the second appellant occupies it through a lease agreement, the occupation is unlawful. As already determined elsewhere in this judgment the law and the courts cannot protect an illegality regardless of the colour, nationality or race of the perpetrator.

This should really be the answer to the appellants' argument in this respect, but for the sake of completeness, there is need to look at the argument from a different perspective. For that purpose I consider it necessary to determine whether the first appellant being a juristic

person is in fact an indigenous black person. The 1st appellant's argument is that it is an indigenous black person because its shareholders are black indigenous natural persons.

It is trite and a matter of elementary law that a company is a fictitious juristic legal entity with a separate and distinct legal existence apart from its shareholders. It is capable of owning property in its own right separate from that of its shareholders. It is an established principle of our law that a company's property is not the property of its members, shareholders or directors. The principle was laid down in *Salomon v Salomon and Co Ltd* [1897] AC 22 HL per LORD HALSBURY LC (30) when he said:

“It seems to me impossible to dispute that once a company is legally incorporated it must be treated like any other independent person with its rights and liabilities appropriate to itself, and that the motives of those who took part in the promotion of the company are absolutely irrelevant in discussing what those rights and liabilities are.”

From the above exposition of the law it follows that the first appellant TBIC Investments (Pvt) Ltd is a separate legal entity from its owners, shareholders and directors.

The question to be addressed in the circumstances is whether a registered company can be classified as being of black or white race. In addressing that question it is important to note that a company has no real physical existence but it is merely an abstract fictitious legal entity. It has no physical existence, colour, flesh or blood. In *Dadoo Ltd and Others v Krugersdorp* 1920 AD 530 at 552 the Court held that:

“A company cannot have an enemy character. In the words of BUCKLEY L. J, it has neither body parts nor passions; it cannot be loyal or disloyal.”

From the authorities and pure common sense, it follows that a company has no colour or race. It does not adopt the colour or race of its owners, shareholders or directors. The

argument by the first appellant TBIC Investments (Pvt) Ltd that it is a black indigenous person is therefore seriously flawed. Government policy relating to indigenous persons only relates to natural persons and not companies. No government policy is violated when government acquires land from a company for resettlement purposes. The court *a quo*'s determination that the first appellant could lawfully be removed from the land to pave way for the first respondent cannot be faulted.

I now turn to consider whether the first respondent's claim can be defeated by virtue of the alleged change of land use. The first appellant filed its opposing affidavit on 8 February 2011. The opposing affidavit was deposed to by its director Killian Kapaso duly authorised thereto by resolution of the company directors. Nowhere in that affidavit did the appellant raise the issue of change of land use as a defence to the first respondent's claim.

The first appellant only raised the issue of change of land use more than two years later in an affidavit deposed to by the same company director Killian Kapaso who had deposed to the original opposing affidavit two years earlier.

In that affidavit, the first appellant was responding to the Chief Registrar of Deeds' affidavit confirming that the land in dispute was registered in the name of the President of Zimbabwe and had become State land in terms of s 16B of the Constitution. That registration still subsists. It has not been nullified by any court of competent jurisdiction.

The issue of State ownership of the acquired land is really an issue between Cecil Michel Reimer and the acquiring authority. Cecil Michael Reimer has however chosen not to

be a party to this matter electing merely to furnish an affidavit confirming that he sold the disputed land to the first appellant.

The appellants' claim that the land in dispute is no longer agricultural land is premised on a photocopy of a Sub-divisional Permit apparently granted to the first appellant by the Minister of Local Government Rural and Urban Development. The alleged permit reads in part as follows:

“PERMIT FOR THE SUBDIVISION OF  
SUBDIVISION OF REMAING EXTENTOF STUHM:  
GOROMONZI DISTRICT”

The Minister of Local Government Rural and Urban Development (hereinafter called the Minister) in terms of Section 40 (3) of the Regional Town and Country Planning Act, [Chapter 29:12] (hereinafter called “The Act”) hereby grants a PERMIT in respect of an application dated 13<sup>th</sup> November 2009 and numbered Mash East 04/2009 in the Register of the Provincial Planning Officer, Mashonaland East, to T.B.I.C INVESTMENTS (PRIVATE) LIMITED (hereinafter called “the applicant”) for the subdivision of:-

|            |   |   |
|------------|---|---|
| A certain  | : | Piece of land situate in the District of Goromonzi  |
| Being      | : | Remaining extent of Stuhm                           |
| Measuring  | : | 583.1360 hectares                                   |
| Held Under | : | Deed of Transfer N0. 1724/2009 dated 18 March 2009” |

The appellants' complaint is that the court *a quo* erred in not making a ruling on the objection to the effect that the land in dispute no longer constituted agricultural land but urban land. As such, it was no longer susceptible to compulsory acquisition in terms of the constitution.

It must be noted that the so called sub-divisional permit was issued to TBIC INVESTMENTS (PRIVATE) LIMITED that is to say the first appellant which did not own the land. The court *a quo* having correctly determined that the disputed land belonged to the



acquiring authority, a sub-divisional permit granted to the first appellant who did not own the land was a nullity *ab initio* and of no force or effect.

A perusal of case law shows that there is no need for the court to pronounce or declare something which is a nullity as being null and void as held in the well-known case of *Mcfoy v United Africa Co. Ltd* [1961] 3 ALL ER 1169 (PC) at 1172. In that case Lord DENNING had occasion to remark that:

“If an act is void, then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the court to be set aside. It is automatically null and void without more ado, although it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.” (Emphasis provided).

It is plain common sense that a permit granted to the first appellant to subdivide land which did not belong to it was a nullity which did not bind anyone. For that reason although it was desirable for the court *a quo* to pronounce its verdict on the objection raised by the first appellant, there was no strict requirement to do so at law.

It is an established fact that the land in question is registered as agricultural land in the name of the acquiring authority. In the absence of any evidence as to how it ceased to be agricultural land, the registration in the Deeds Office prevails.

In the case of *Lilifort Toro v Vodge Investments (Pvt) Ltd* SC 15/2017, there was clear evidence as to how the land had ceased to be agricultural land to become urban land by virtue of Proclamation 3 of 2012, S.I 115 of 2012. This was followed up by an official hand over of the land through a letter dated 10 June 2013.

In this case, nothing of the sort happened. The acquiring authority continues to claim ownership of the land registered in his name. It is trite that registration in the Deeds Registry constitutes proof of ownership of land. All the parties to this case looked up to him for relief without any reference to the Minister of Local Government Rural and Urban Development. This amounts to recognition of his ownership and authority over the disputed land. That is ample proof that the Minister of Local Government had no Authority to convert agricultural land to urban Land without the consent of his colleague, the acquiring authority. Any purported change of ownership of the land without the consent of the acquiring authority was therefore a legal nullity and of no force or effect.

In the final analysis we come to the unanimous conclusion that there is absolutely no merit in this appeal.

It is accordingly ordered as follows:

That the appeal be and is hereby dismissed with costs.

**GWAUNZA JA**                      I agree

**GOWORA JA**                      I agree

*Gama & Partners*, appellants' legal practitioners

*Moyo & Jera*, 1<sup>st</sup> respondent's legal practitioners

*Civil Division of The Attorney-General*, 4<sup>th</sup> respondent's legal practitioners