

03/09 Campbell & Etheredge v. Zimbabwe

In the Southern African Development Community (SADC) Tribunal Windhoek, Namibia

In the Matter Between

William Michael Campbell 1st Applicant

Richard Thomas Etheredge 2nd Applicant

And

The Republic of Zimbabwe - Respondent

Coram:

H.E. Justice A. G. Pillay - President

H.E. Justice I. J. Mtambo, SC - Member

H.E. Justice Dr. L. A. Mondlane - Member

H.E. Justice Dr. R. Kambovo - Member

H.E. Justice Dr. O. B. Tshosa - Member

Applicant's Agents - J.J Gauntlett, SC F.B. Pelser Counsel

Respondent's Agents:

P. Machaya - Deputy Attorney-General

N. Mutsonziwa - Chief Law Officer

Hon. Justice M. C. C. Mkandawire - Registrar

Mr. Dennis Shivangulula - Court Clerk

Ruling

Delivered by the President of the Tribunal H.E. Justice A.G. Pillay.

This is an urgent application filed by the applicants on 7 May 2009 seeking, in substance, a declaration to the effect that the respondent is in breach, and contempt, of the decision of the Tribunal of the 28th November 2008 in the matter of Mike Campbell (Pvt) Ltd and 78 Others v The Republic of Zimbabwe (Case no SADC (T) 02/07).

The decision of the Tribunal was to the effect, in substance, that "the Respondent is directed to take all necessary measures, through its agents, to protect the possession, occupation and ownership of the land of the applicants... and to take all appropriate measures to ensure that no action is taken... directly or indirectly whether by its agents or others, to evict from, or interfere with, the peaceful residence on, and of these farms, by the applicants."

We note that the respondent has not taken part in the proceedings since, as learned Counsel for the respondent has put it, he lacks instructions from the respondent.

We hold that the applicants have adduced enough material to show that the existence of a failure on the part of the respondent and its agents to comply with the decision of the Tribunal has been established. In

this regard, we need only, *inter alia*, to refer to-

(1) the Deputy Attorney-General's letter addressed to Messrs Gollop and Blank, Legal Practitioners dated 18 December 2008 which says: "... that the policy position taken by the Government to the judgment handed down by the SADC Tribunal on the 28th November, 2008 is that all prosecutions of defaulting farmers under the provisions of the Gazetted Lands (Consequential Provisions) Act should now be resumed";

(2) the speech delivered in Bulawayo, Zimbabwe by the Deputy Chief Justice on 12 January 2009 at the opening of the 2009 legal year in the course of which he stated, among other things, that the Tribunal lacked jurisdiction to hear and determine the Campbell case;

(3) President Robert Mugabe in the course of his birthday celebrations qualified the Tribunal's decision as "nonsense" and "of no consequence."

We note further that all those statements were followed by invasion of the lands of the applicants and their intimidation and prosecution.

Consequently, pursuant to Article 32(5) of the Protocol on Tribunal, the Tribunal will report its finding to the Summit for the latter to take appropriate action.

We order costs in favour of the applicants, pursuant to Rule 78(2) of the Rules of Procedure of the SADC Tribunal. The costs are to be agreed by the parties. In case of disagreement, the Registrar shall determine the costs to be awarded.

Delivered in open court this 05th day of June 2009, at Windhoek in the Republic of Namibia.

**H.E Justice Ariranga Govindasamy Pillay
PRESIDENT**

**H.E Justice Isaac Jamu Mtambo, SC
MEMBER**

**H.E Justice Dr Luis Antonio Mondlane
MEMBER**

**H.E Justice Dr Rigoberto Kambovo
MEMBER**

**H.E Justice Dr Onkemetse B. Tshosa
MEMBER**