

02/08 Gideon Theron v. Zimbabwe & 2 Others

**In the Southern African Development Community (SADC) Tribunal Windhoek, Namibia
CASE NO SADC (T) 2/08**

In the Matters Between

Gideon Stephanus Theron Applicant/Intervener

And

**The Republic of Zimbabwe - 1st Respondent
Mike Campbell (Pvt) Ltd - 2nd Respondent
William Michael Campbell - 3rd Respondent**

CASE NO SADC (T) 03/08

**Douglas Stuart Taylor-Freeme - 1st Applicant/Intervener
Merle Taylor-Freeme - 2nd Applicant/Intervener
Konrad Van Der Merwe - 3rd Applicant/Intervener
Louis Karel Fick - 4th Applicant/Intervener
And**

**The Republic of Zimbabwe - 1st Respondent
Mike Campbell (Pvt) Ltd - 2nd Respondent
William Michael Campbell - 3rd Respondent**

CASE NO SADC (T) 04/08

**Andrew Paul Rosslyn Stidolph - 1st Applicant/Intervener
R.J Van Rensburg and sons (Pvt) Ltd - 2nd Applicant/Intervener
Reinier Janse Van Rensburg(Senior) - 3rd Applicant/Intervener
Harlen Brothers (Pvt) Ltd - 4th Applicant/Intervener
Raymond Finaughty - 5th Applicant/Intervener
Bouchcap (Pvt) Ltd - 6th Applicant/Intervener
Dirk Visagie - 7th Applicant/Intervener
Sabaki(Pvt) Ltd - 8th Applicant/Intervener
William Bruce Rogers - 9th Applicant/Intervener
J.B.W Arden & Sons (Pvt) Ltd - 10th Applicant/Intervener
William Gilchrist Nicolson - 11th Applicant/Intervener
Richard Thomas Etheredge - 12th Applicant/Intervener
John Norman Eastwood - 13th Applicant/Intervener
Johannes Frederick Fick - 14th Applicant/Intervener
W.R Seaman (Pvt) Ltd - 15th Applicant/Intervener
Wayne Redvers Seaman - 16th Applicant/Intervener
Petrus Stephanus Martin - 17th Applicant/Intervener
Ismael Campher Pasques - 18th Applicant/Intervener
Claremont Estates (Pvt) Ltd - 19th Applicant/Intervener
Gramara (Pvt) Ltd - 20th Applicant/Intervener
Colin Baillie Cloete - 21st Applicant/Intervener
Blakle Stanley Nicolle - 22nd Applicant/Intervener
Newmarch Farm (Pvt) Ltd - 23rd Applicant/Intervener
John McCleary Beatie - 24th Applicant/Intervener
Hermanus Gerhardus Grove - 25th Applicant/Intervener
Frederick Willem Biutendag - 26th Applicant/Intervener**

L.M.Farming (Pvt) Ltd - 27th Applicant/Intervener
Bart Harvey McClelland Wilde - 28th Applicant/Intervener
P.N.Stidolph (Pvt) Ltd - 29th Applicant/Intervener
Neville Stidolph - 30th Applicant/Intervener
Katambora Estates (Pvt) Ltd - 31st Applicant/Intervener
Andrew Roy Ferreira - 32nd Applicant/Intervener
Herbst Estate (Pvt) Ltd - 33rd Applicant/Intervener
Andrew Marc Ferangcon Herbst - 34th Applicant/Intervener
Izak Daniel Nel - 35th Applicant/Intervener
Johannes Hendrik Oosthuizen - 36th Applicant/Intervener
Murray Hunter Pott - 37th Applicant/Intervener
Gary Bruce Hensman - 38th Applicant/Intervener
Charles Thomas Schoultz - 39th Applicant/Intervener
Jack Walter Hall - 40th Applicant/Intervener
Busi Coffee Estate (Pvt) Ltd - 41st Applicant/Intervener
Algernan Tracy Taffs - 42nd Applicant/Intervener
Elsje Hester Herbst - 43rd Applicant/Intervener
Cristoffel Giedeon Herbst - 44th Applicant/Intervener
Jacobus Adriaan Smit - 45th Applicant/Intervener
Palm River Ranch (Pvt) Ltd - 46th Applicant/Intervener
John Robert Caudrey Beverley - 47th Applicant/Intervener
Robert Anthony McKersie - 48th Applicant/Intervener
S.C.Shaw (Pvt) Ltd - 49th Applicant/Intervener
Grant Ian Locke - 50th Applicant/Intervener
Peter Foster Booth - 51st Applicant/Intervener
Aristides Peter Landos - 52nd Applicant/Intervener
Ann Lourens - 53rd Applicant/Intervener
N & B Holdings (Pvt) Ltd - 54th Applicant/Intervener
Digby Sean Nesbitt - 55th Applicant/Intervener
Kenneth Charles Ziehl - 56th Applicant/Intervener
Kenyon Garth Baines Ziehl - 57th Applicant/Intervener
Mleme Estate (Pvt) Ltd - 58th Applicant/Intervener
Jean Daniel Cecil de Robbilard - 59th Applicant/Intervener

And

The Republic of Zimbabwe - 1st Respondent
Mike Campbell (Pvt) Ltd - 2nd Respondent
William Michael Campbell - 3rd Respondent

CASE NO SADC (T) 06/08

Anglesea Farm (Pvt) Ltd - 1st Applicant/Intervener
Gameston Enterprises (Pvt) - 2nd Applicant/Intervener
Malundi Ranching Co (Pvt) Ltd - 3rd Applicant/Intervener
Gwelmid Property Holdings (Pvt) Ltd - 4th Applicant/Intervener
Tamba Farm (Pvt) Ltd - 5th Applicant/Intervener
R.H.Greaves (Pvt) Ltd - 6th Applicant/Intervener
Heany Junction Farms(Pvt)Ltd - 7th Applicant/Intervener
Rudolf Isaac Du Preez - 8th Applicant/Intervener
Walter Bryan Lawry - 9th Applicant/Intervener
Derek Alfred Rochat - 10th Applicant/Intervener
Christopher Mellish Jarrett - 11th Applicant/Intervener
Tengwe Estate (Pvt) Ltd - 12th Applicant/Intervener

France Farm (Pvt) Ltd - 13th Applicant/Intervener

And

The Republic of Zimbabwe - 1st Applicant/Respondent
Mike Campbell(Pvt) Ltd - 2nd Applicant/Respondent

Coram :

H.E. Justice Dr. L.A. Mondlane - President
H.E. Justice A.G. Pillay - Member
H.E. Justice I. J. Mtambo, SC - Member
H.E. Justice Dr. R. Kambovo - Member
H.E. Justice Dr. O. B. Tshosa - Member

Applicant's Agents:

J.J. Gauntlett, SC
A.P. De Bourbon, SC
E.M. Angula, 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

H.E. Justice Dr Luis Antonio Mondlane delivered the Ruling

The applicants/interveners are seeking leave to intervene as co-applicants in the matter of **Mike Campbell (Pvt) Ltd and William Michael Campbell v the Republic of Zimbabwe, SADC (T)**, in terms of Rule 70 of the Rules of Procedure of the SADC Tribunal, hereinafter referred to as the Rules. They are also seeking, as a matter of urgency, that the Respondent be directed to take no steps, or permit no steps to be taken, directly or indirectly, whether by agents of the 1st Respondent, or by others, to evict from, or interfere with, the peaceful residence on, and beneficial use of, their properties, pursuant to Article 28 of the Protocol on Tribunal, as read with Rule 61, sub-rules 2 to 5. Both Article 28 and Rule 61 govern the grant of interim measures.

All the applications were consolidated and heard together and we are delivering a single ruling, a copy of which is to be filed in each record.

Rule 70 in the relevant part provides:

1. A Member State, Institution, or person may apply to intervene in any proceedings.

2. An application in terms of this Rule shall be made as soon as possible and not later than the closure of the written proceedings or in exceptional cases, and upon good cause shown, not later than the date set for the oral hearing.

We observe here that at the time of filing the applications the written proceedings in the **Campbell case** had been closed, so that we only need to consider whether good cause has been shown for the applications to be entertained.

It was submitted on behalf of the applicants/interveners that the rationale behind the right of intervention is to ensure that the Tribunal deals with all similar matters in the same hearing rather than subject itself to a multiplicity of actions arising out of the same set of facts and circumstances, thus avoiding the risk of divergent decisions by the same court relating to the same circumstances.

It was further submitted that the purpose is also to ensure that scarce resources are not needlessly engaged in serial litigation, when the central issues of fact and law affecting a number of persons are capable of being dealt with in a single proceeding. It was also argued that in each case the same laws of the Republic of Zimbabwe, and the same actions of the 1st Respondent contravene the provisions of the SADC Treaty. In conclusion, it was asserted that in each case, the applications raise the same issues as in the **Campbell case**.

We note here that the 1st Respondent did not oppose the applications, indicating that it is in the interest of everyone concerned that the matters be dealt with together once and for all.

We have carefully considered all the facts and circumstances of the applications, and are of the considered view that good cause has been shown and therefore that the applications may be entertained, the more so since both the factual and legal background of these applications are similar to the **Campbell case**.

Referring to the interim measure, the applicants/interveners contended that the relief granted in the **Campbell Case** is a matter of principle and not peculiar to the factual situation in that case. They, therefore, submitted that any other person granted leave to intervene in **Campbell case** should be granted the same interim relief. There would be no basis for differentiation, it was further submitted.

It was submitted on behalf of the 1st Respondent, on the other hand, that the relief is not applicable in the present circumstances and that the 1st Respondent did not oppose the granting of interim relief in the **Campbell case** because at that time there was a matter (**Mike Campbell (Pvt) Ltd and other v the Minister of National Security responsible for Land, Land Reform and Resettlement and the Attorney-General - Constitutional Application No. 124/06**), pending in the Supreme Court of Zimbabwe. It was further submitted that the Supreme Court of Zimbabwe has now delivered its decision upholding the constitutionality of the law in question. It was further argued that the constitutional amendment does not amount to discrimination on the ground of race in terms of Article 4 paragraph (c) of the Treaty. Consequently, it is not appropriate to grant interim relief to the applicants/interveners, it was argued. It was, however, conceded that the law in question abrogates the rights of the applicants/interveners but only to the extent necessary to fulfill the objectives set by the 1st Respondent. Accordingly, it was submitted that there is no *prima facie* right to the relief sought.

We do not consider that any of the arguments advanced on behalf of the 1st Respondent apply to the facts and circumstances of the present applications in so far as interim relief is concerned. The prevailing criteria which govern the grant of interim relief, as stated in the **Campbell case**, are the following:

- a) a *prima facie* right that is sought to be protected;
- b) an anticipated or threatened interference with that right;
- c) an absence of any alternative remedy; and

d) the balance of convenience in favour of the applicants that an interdict is the appropriate relief in the circumstances.

Just as in the **Campbell case**, there exists in the present applications a *prima facie* right that the applicants/interveners seek to protect, namely, the right to peaceful occupation of their properties; and there is anticipated or threatened interference with that right; and the applicants/interveners do not appear to have any alternative remedy, thereby tilting the balance of convenience in their favour.

In the result, we grant the applications to intervene in respect of all applicants/interveners in terms of Rule 70 of the Rules. We direct that the applicants/interveners shall be supplied with copies of pleadings and any documents produced by April 25, 2008 and therefore the applicants/interveners may submit written statements by May 6, 2008. We also grant the application for interim relief to all applicants/interveners, except for Christopher Mellish Jarret, Tengwe Estates (Pvt) Ltd, and France Farm (Pvt) Ltd, that have already been evicted from their properties, as indicated by their agent, pending the determination of the main case. Accordingly, we order that the Republic of Zimbabwe shall take no steps, or permit no steps to be taken, directly or indirectly, whether by its agents or by orders, to evict from, or interfere with, the peaceful residence on, and beneficial use of, their properties in respect of the applicants/interveners referred to in the previous paragraph, their employees and the families of such employees.

We make no order as to costs.

Delivered in Open Court this 28th day of March 2008 at Windhoek in the Republic of Namibia.

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H.E. Justice Dr Luis Antonio Mondlane (President)

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H.E. Justice Ariranga Govindasamy Pillay Member

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H.E. Justice Isaac Jamu Mtambo, SC Member

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H.E. Justice Dr Rigoberto Kambovo Member

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H.E. Justice Dr Onkemetse B. Tshosa Member