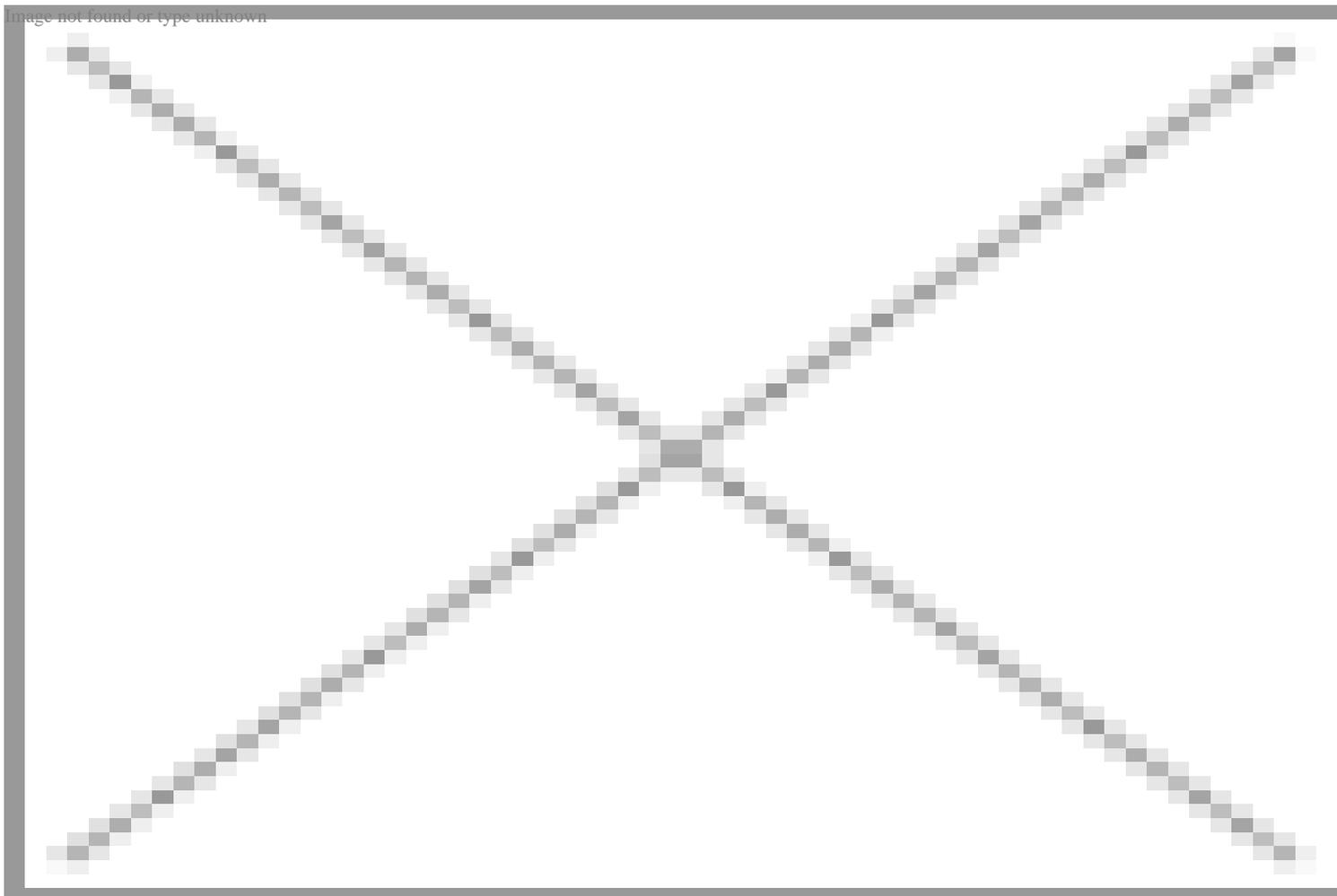


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The Complexity of Land Expropriation

By Carmel Rickard

TO an outsider, the case might at first sight seem no more than a relatively simple dispute over ownership of the land on which a shopping mall is being built. But the case of [Stantoll v Johannes](#) [1] involves far more complex issues than that. It is also about the difficulties surrounding state expropriation of land and subsequent expectations of compensation, at a time when this is a hot issue in many African countries. In fact, the case has caused something of a headache for the presiding judge, as well as for the judiciary in Namibia. As Carmel Rickard explains, the presiding judge has become the focus of protests by land-rights groups with allegations that he is a “foreign land-monger”, and, apparently to deflate growing tension, the Judge President has taken over the disputed case as well as a second case that is just as contentious.



[2]

THE case that initially sparked all the trouble involves a property developer and members of an extended family clan that used to live on the site where the development is taking place.

The disputed land lies in Ongwediva, part of Namibia's remote, far north, an area where communal land rights are a hot issue and where the country's ruling party has its stronghold. It's also an area ripe for development.

Stantoll Properties CC, the applicant in the matter, is just such a developer and has begun construction of a shopping mall in Ongwediva. The big question is this: on whose land is the mall being built?

Stantoll says it bought the land from the local council and it had the relevant title deeds to prove this. It had a lease with other businesses ready to move into the mall and could face penalties if the mall were not ready in time, Stantoll said.

The problem was that the respondents in the case, the people who claimed the land belonged to them by virtue of communal land rights, have tried to prevent the building from going ahead, protesting at the building operations, and assaulting Stantoll's staff. As a result, "construction has been abandoned" said Stantoll.

Counsel for Lukas Johannes, the named respondent, said he and others were resident on the land and had occupied it under the traditional authority, long before the local council was set up. Then the Namibian government expropriated the land, taking it away from the traditional authority and giving it to the council. The council in turn sold it to the developer. Johannes and his extended family argued that it was unlawful that they should be thrown off the land they had long occupied, and in any case, if the land were expropriated they were due compensation. Until they were compensated, they would continue to protest.

The judge presiding, Maphios Cheda, noted that Stantoll had committed N\$50m to the project. It employed 750 people on the site and Stantoll could suffer great financial harm if the protests continued. The compensation claim by Johannes should be brought against the local authority rather than the developer, the judge concluded.

The judge also directed strong criticism against Johannes and others dispossessed by the government action, saying, "Namibia is a peaceful and democratic country ... while its constitution permits demonstrations as a way of protest, such protests have to be conducted within the confines of the law." Violence and threats of violence could not be tolerated. It was the law of the jungle and the court would not allow it.

[The interim order granted by the judge](#) [3] precisely reflected what Stantoll had asked for: that the protests had to stop, that Johannes, his family and their animals would be removed and that the police would be called in if necessary to arrest them. All this was coupled to a punitive costs order.

The return date was set for a month later, but well before that date serious protests broke out in response to his judgment on the interim order. On social media, in the press and in public gatherings, the decision was condemned. So great was the outcry and the criticism of the judge personally, that the organized legal profession stepped in to remind people that judicial independence was "sacrosanct" and that it had to be protected to ensure that judges "remain fearless, impartial and act without prejudice".

Protestors seized on the fact that the judge was originally from Zimbabwe. When he left that country in 2011, one of several judges to do so at the time, the Zimbabwe media speculated that it was partly due to the fact that judges were not paid regularly and experienced poor working conditions.

Cheda has been a member of the Namibian bench almost from the time he relocated, and this fact was stressed by his critics who used xenophobic language, calling for him to "go home" and describing him as a "land-monger". This last is a reference to the fact that he has bought land in the Oshakati area, near Ongwediva, under circumstances that his critics regard as suspect.

The situation became so fraught – protesters even launched a campaign for him to be removed from the

bench – that the judge president of the high court, Petrus Damaseb, who is also the deputy chief justice, has decided to take over both the Stantoll case and a related matter in which a number of local people are contesting efforts by the local council to evict them from the land on which they are living. The villagers quote their constitutional rights in support of their refusal to move.

In the wake of his initial judgment, and after the protests had blown up, the two cases were again called before Cheda. [In his subsequent court order](#), [4] he said that a constitutional issue had been raised in the two matters “which touches on the possibility of an infringement of the parties’ constitutional rights, in particular some sections of the Communal Land Reform Act”. Given this “new development”, said Cheda, he had discussed the matter with the judge president “who has directed that all matters regarding land disputes should be placed before him”.

Both cases were thus postponed and the interim order in the Stantoll case extended.

The new date for the matters to come before the judge president is now July 3, when a preliminary condonation application will be heard. How the judge president will handle the cases remains to be seen, but the situation offers a warning to countries, like SA, that are contemplating an official policy of “expropriation without compensation”.

[Stantoll](#) [3] [Properties CC v Johannes \(HC-NLD-CIV-MOT-GEN-2018/00005\) \[2018\] NAHCNLD 23 \(07 March 2018\)](#); [3]

[Stantoll](#) [4] [Properties CC v Johannes; In Re: Ongwediva Town Council v Kavili and Others \(HC-NLD-CIV-MOT-GEN-2018/00005\) \[2018\] NAHCNLD 44 \(18 April 2018\); \(Order\)](#) [4]

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