

28 March 2008

Case No. SADCT: 2/08; Case No. SADCT: 03/08; Case No. SADCT: 04/08; Case No.  
SADCT: 06/08

**SOUTHERN AFRICAN DEVELOPMENT COMMUNITY TRIBUNAL**

**GIDEON STEPHANUS THERON**

v.

**THE REPUBLIC OF ZIMBABWE, MIKE CAMPBELL (PVT) LTD AND WILLIAM  
MICHAEL CAMPBELL**

**DOUGLAS STUART TAYLOR-FREEME, MERLE TAYLOR-FREEME KONRAD,  
VAN DER MERWE AND LOUIS KAREL FICK**

v.

**THE REPUBLIC OF ZIMBABWE, MIKE CAMPBELL (PVT) LTD AND WILLIAM  
MICHAEL CAMPBELL**

**ANDREW PAUL ROSSLYN STIDOLPH, R.J VAN RENSBURG AND SONS (PVT)  
LTD, REINIER JANSE VAN RENSBURG(SENIOR), HARLEN BROTHERS (PVT)  
LTD, RAYMOND FINAUGHTY, BOUNCHCAP (PVT) LTD, DIRK VISAGIE,  
SABAKI(PVT) LTD, WILLIAM BRUCE ROGERS, J.B.W ARDEN & SONS (PVT)  
LTD, WILLIAM GILCHRIST NICOLSON, RICHARD THOMAS ETHEREDGE,  
JOHN NORMAN EASTWOOD, JOHANNES FREDERICK FICK, W.R SEAMAN  
(PVT) LTD, WAYNE REDVERS SEAMAN, PETRUS STEPHANUS MARTIN,  
ISMAEL CAMPHER PASQUES, CLAREMONT ESTATES (PVT) LTD, GRAMARA  
(PVT) LTD, COLIN BAILLIE CLOETE, BLAKLE STANLEY NICOLLE,  
NEWMARCH FARM (PVT) LTD, JOHN MCCLEARY BEATIE, HERMANUS  
GERHARDUS GROVE, FREDERICK WILLEM BIUTENDAG, L.M.FARMING  
(PVT) LTD, BART HARVEY MCCLELLAND WILDE, P.N.STIDOLPH (PVT) LTD,  
NEVILLE STIDOLPH, KATAMBORA ESTATES (PVT) LTD, ANDREW ROY  
FERREIRA, HERBST ESTATE (PVT) LTD, ANDREW MARC FERANGCON  
HERBST, IZAK DANIEL NEL, JOHANNES HENDRIK OOSTHUIZEN, MURRAY  
HUNTER POTT GARY BRUCE, HENSMAN CHARLES THOMAS, SCHOULTZ  
JACK WALTER HALL BUSI, COFFEE ESTATE (PVT) LTD ALGERNAN, TRACY  
TAFFS ELSJE HESTER HERBST, CRISTOFFEL GIEDEON HERBST, JACOBUS  
ADRIAAN SMIT PALM, RIVER RANCH (PVT) LTD JOHN, ROBERT CAUDREY  
BEVERLEY ROBERT, ANTHONY MCKERSIE S.C.SHAW, (PVT) LTD GRANT  
IAN LOCKE PETER, FOSTER BOOTH ARISTIDES PETER, LANDOS ANN  
LOURENS N & B, HOLDINGS (PVT) LTD DIGBY SEAN, NESBITT KENNETH  
CHARLES ZIEHL, KENYON GARTH BAINES ZIEHL, MLEME ESTATE (PVT)  
LTD AND JEAN DANIEL CECIL DE ROBBILARD**

v.

**THE REPUBLIC OF ZIMBABWE, MIKE CAMPBELL (PVT) LTD AND WILLIAM  
MICHAEL CAMPBELL**

**ANGLESEA FARM (PVT) LTD, GAMESTON ENTERPRISES (PVT), MALUNDI RANCHING CO (PVT) LTD, GWELMID PROPERTY HOLDINGS (PVT) LTD, TAMBA FARM (PVT) LTD, R. H.GREAVES (PVT) LTD, HEANY JUNCTION FARMS (PVT) LTD, RUDOLF ISAAC DU PREEZ, WALTER BRYAN LAWRY, DEREK ALFRED ROCHAT, CHRISTOPHER MELLISH JARRETT, TENGWE ESTATE (PVT) LTD AND FRANCE FARM (PVT) LTD**

**v.**

**THE REPUBLIC OF ZIMBABWE AND MIKE CAMPBELL (PVT) LTD**

## **RULING**

**BEFORE:** PRESIDENT: Dr. L.A. Mondlane  
JUDGES: A.G. Pillay; I. J. Mtambo; Dr. R. Kambovo; Dr. O. B. Tshosa

**Citation:** Theron v. Zimbabwe, Ruling Case No. SADCT: 2/08; Case No. SADCT: 03/08; Case No. SADCT: 04/08; Case No. SADCT: 06/08 (SADC, Mar. 28, 2008)  
**Represented By:** APPLICANT'S AGENTS: J. J. Gauntlett, A. P. De Bourbon, E. M. Angula  
RESPONDENT'S AGENTS: P. Machaya, Deputy Attorney General N. Mutsonziwa, Chief Law Officer

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## **RULING**

**H. E. JUSTICE DR LUIS ANTONIO MONDLANE DELIVERED THE RULING**

[1] 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) 2/07, 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.

[2] 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.

[3] 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.

[4] 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.

[5] It was submitted on behalf of the applicants/intervenors 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.

[6] 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.

[7] 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.

[8] 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.

[9] Referring to the interim measure, the applicants/intervenors 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.

[10] 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/intervenors, it was argued. It was, however, conceded that the law in question abrogates the rights of the applicants/intervenors 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.

[11] 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.

[12] Just as in the Campbell case, there exists in the present applications a prima facie right that the applicants/intervenors 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/intervenors do not appear to have any alternative remedy, thereby tilting the balance of convenience in their favour.

[13] In the result, we grant the applications to intervene in respect of all applicants/intervenors in terms of Rule 70 of the Rules. We direct that the applicants/intervenors shall be supplied with copies of pleadings and any documents produced by April 25, 2008 and therefore the applicants/intervenors may submit written statements by May 6, 2008. We also grant the application for interim relief to all applicants/intervenors, 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/intervenors referred to in the previous paragraph, their employees and the families of such employees.

[14] We make no order as to costs.

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

H. E. Justice Dr Luis Antonio Mondlane  
President

H. E. Justice Ariranga Govindasamy Pillay  
Member

H. E. Justice Isaac Jamu Mtambo  
SC Member

H. E. Justice Dr Rigoberto Kambovo  
Member

H. E. Justice Dr Onkemetse B. Tshosa Member