

LYNHUST ESTATE (PRIVATE) LIMITED
versus
THE MINISTER OF SPECIAL AFFAIRS IN
THE PRESIDENT'S OFFICE IN CHARGE OF
LANDS, LAND REFORM AND RESETTLEMENT
and
THE MINISTER OF JUSTICE, LEGAL AND
PARLIAMANTARY AFFAIRS
and
THE MEMBER IN-CHARGE CHIREDDZI POLICE STATION
and
THE ATTORNEY GENERAL

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 3 August 2004 and 25th August 2004

Mr *Arnott*, for the applicant

BHUNU J: This matter came before me as an urgent chamber application. I ruled that the matter is not urgent. Counsel for the applicant has asked me for the reasons for my ruling. I now proffer the reasons for my ruling.

This applicant is the owner of Hippo Valley Settlement Holding 39. The applicant has since been issued with a land acquisition order in terms of section 8 of the Land Acquisition Act [*Chapter 20:10*]. The order was issued on the 2nd of July 2004 in consequence whereof the applicant is required to cease all farming operations within 45 days from the date of issue.

Aggrieved by the order the applicant has now challenged the constitutionality of section 8 of the Act in the Supreme Court. The applicant in the interim seeks a provisional order declaring the amendments to sections 7, 8, 9 and 10 in terms of the Land Acquisition Amendment Acts of 2002 and 2004 to be invalid and of no force or effect. It then seeks a declarator invalidating the acquisition of the land in question. As an interim relief it seeks to restrain the first respondent from further proceeding with the acquisition of the mentioned property and a suspension of the section 8 acquisition order pending the resolution of the dispute.

I ruled that the matter is not urgent because the acquisition was done in terms of a valid piece of legislation. That piece of legislation continues to be binding on the parties until such time that it is lawfully invalidated. Thus the first respondent's conduct in issuing the section 8 acquisition order is not tainted with illegality until such time that that law is legally abrogated.

As the first respondent's conduct is not *per se* tainted with illegality no urgency can arise from such conduct. That being the case as things stand right now no rights have been infringed because the acquisition was done in terms of a valid piece of legislation. The law in my view does not cease to be binding simply because there is an intention to challenge its validity in the courts.

I also do not think that it is the function of the courts to suspend the operation of a valid piece of legislation.

Admittedly the wheels of justice tend to turn slowly but there is need to abide by the rule of law until such time the law ceases to be good law.

As the issue of the legality or otherwise of section 8 of the Act is awaiting resolution in the Supreme Court this court cannot at this stage issue the order sought without preempting the Supreme Court's decision. It therefore appears to me that the applicant is pushing the wrong end of the stick. It should move the Supreme Court to determine the issue on an urgent basis. This will have the effect of settling the matter once and for all because the Supreme Court has the final word on all matters of law.

It is for these reasons that I ruled that this matter is not urgent.

The application to have his matter heard on an urgent basis is accordingly dismissed with no order as to costs.

The Civil Division of the Attorney-General's Office, the respondent's legal practitioners