

**IN THE SOUTHERN AFRICAN DEVELOPMENT  
COMMUNITY (SADC) TRIBUNAL WINDHOEK, NAMIBIA**

**CASE NO. SADC (T) 11/08**

**IN THE MATTER BETWEEN**

**MIKE CAMPBELL (PVT) LIMITED  
AND OTHERS**

**APPLICANTS**

**And**

**THE REPUBLIC OF ZIMBABWE**

**RESPONDENT**

**CORAM:**

**HON. JUSTICE DR. MONDLANE  
HON. JUSTICE PILLAY  
HON. JUSTICE MTAMBO, S C  
HON. JUSTICE DR. KAMBOVO  
HON. JUSTICE DR. TSHOSA**

**PRESIDENT  
MEMBER  
MEMBER  
MEMBER  
MEMBER**

**APPLICANT'S AGENTS**

**J.J. GAUNTLETT, SC  
A.P. DE BOURBON, SC  
E. M. ANGULA**

**RESPONDENT'S AGENTS**

**P. MACHAYA  
F. C. MAXWELL  
M. T. DINHA**

**HON. JUSTICE M.C.C MKANDAWIRE  
MR DENNIS SHIVANGULULA**

**REGISTRAR  
COURT CLERK**

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## RULING

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This is an urgent application filed by the applicants on 30<sup>th</sup> June 2008, seeking in substance, a declaration to the effect that the respondent is in breach and contempt of the orders of the Tribunal of the 13<sup>th</sup> December, 2007 and 28<sup>th</sup> March, 2008 (**CASE NO SADC (T) 2/07 In the Matter between Mike Campbell (Pvt) Ltd and The Republic of Zimbabwe, CASE NO SADC (T) 02/08, In the Matters between Gideon Stephanus Theron versus The Republic of Zimbabwe and two others, CASE NO SADC (T) 03/08, Douglas Stuart Taylor-Freeme and three Others versus The Republic of Zimbabwe and two Others, CASE NO SADC (T) 04/08, Andrew Paul Rosslyn Stidolph and fifty eight Others versus The Republic of Zimbabwe and two Others, CASE NO SADC (T) 06/08, Anglesea Farm (Pvt) Ltd and twelve Others versus The Republic of Zimbabwe and Another** respectively) and of the respondent's representative's formal undertaking to the Tribunal, on 28<sup>th</sup> May, 2008, of compliance with the orders.

The two orders specified that the respondent should 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, their employees and the families of such employees.

At the outset of the hearing of the application, learned Counsel for the respondent made a request for a postponement of the hearing for one hour in order to consult with his principals. The Tribunal granted him an adjournment of thirty minutes. When the hearing resumed, learned Counsel for the respondent made a formal motion for a postponement in order to adduce evidence in rebuttal. The Tribunal did not accede to the motion, since on 14<sup>th</sup> July 2008 a counter-affidavit had already been filed on behalf of the respondent and that Counsel had sufficient notice of the hearing to adduce counter evidence.

We have considered the counter-affidavit of the respondent, which is substantially to the effect that there is a state of lawlessness prevailing in the country and that the authorities have difficulty in addressing the problems of intimidation and violence committed by certain people.

We hold, however, that the applicants have adduced abundant material to show that the existence of the failure on the part of the respondent and its agents to comply with the decisions of the Tribunal has been established. In this connection, we need only to reproduce the letter of 11<sup>th</sup> June, 2008 sent to the legal firm Coghlan, Welsh and Guest, the advisers of the applicants, where it is amply demonstrated that the respondent's aim is to prosecute the applicants for remaining on their lands, and subsequently evicting them therefrom upon conviction, and which reads as follows:

“.....

*Attention: Mr A.N.B. Masterson*

**Re: SADC TRIBUNAL INTERIM ORDER: RELIEF  
FOR INTERVENERS**

*Previous correspondence refers.*

*The provisional order of the SADC Tribunal cannot and has not suspended the Attorney General’s Constitutional responsibility to prosecute violators of any of Zimbabwe’s existing criminal laws such as section 3 of the Gazetted Lands (Consequential Provisions) Act.*

*As I stated in my previous minute to yourselves the Attorney-General’s Office is proceeding with the prosecutions.*

*Yours sincerely,*

***J Tomana***  
**DEPUTY ATTORNEY-GENERAL-CRIME**

***CC: Acting Attorney-General – Justice Patel***  
***.....”***

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 make no order as to costs.

**Made this 18<sup>th</sup> Day of July, 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 Basta. Tshosa  
MEMBER**