1. SERE (PRIVATE) LIMITED
versus
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2. HIPPO VALLEY ESTATES LIMITED
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4. HIPPO VALLEY ESTATES LIMITED
versus
CHIREDZI NOMINEES (PRIVATE) LIMITED & 22 OTHERS HC 5831/03
and
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and
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and
DENHARII (PRIVATE) LIMITED & 4 OTHERS HC 5804/03
and
LYNDHURST ESTATE (PRIVATE LIMITED and 2 OTHERS HC 6321/03
and
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and
RIO ENTERPRISES & 5 OTHERS HC 5811/03
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and
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HIGH COURT OF ZIMBABWE
CHITAKUNYE J
HARARE, 24 May 2006

Interpleader

Mr *S Moyo*, for applicant
Advocate A de Bouborn, for Sere (Private) Limited and 1st respondents
Advocate Gijima, for all other respondents

CHITAKUNYE J: The applicant Hippo Valley Estates Limited is a Sugar Cane Miller obliged by law to accept sugar cane from growers for milling at its mills. The first respondent in almost all the cases owned farms or settlements on which the rest of the respondents claimed to have been resettled by the government.

The respondents delivered sugar cane to applicant for milling. After having accepted the sugar cane for milling the applicant was faced with two competing claims; from the 1st respondents and from the rest of the respondents. It was in these circumstances that the applicant instituted these interpleader proceedings.

In *Bon Espoir (Private) Limited v Hippo Valley Estates Limited and Another* HC 6318/03 KAMOCHA J gave directives to the effect that all contested matters pertaining to the interpleader proceedings be heard by one judge.

All the above cases were thus placed before me.

In *Hippo Valley Estates Limited v Lynhurst Estates (Private) Limited and 2 others* HC 6321/03 the question of whether interpleader proceedings were the proper course was argued I ruled that the applicant was indeed entitled to approach this court by way of interpleader as there were competing claims for payments for the same sugar cane.

From the papers filed of record and submissions made, it is common cause that the applicant received sugar cane for milling. That sugar cane was harvested from farms the government had purportedly acquired in terms of the Land Acquisition Act [*Chapter 20:10*]. In most cases Section 8 orders had been issued.

It is also common cause that in many of the cases the section 8 order were later nullified or set aside by the courts, but persons who claimed to have been resettled on those farms by the government remained on the farms.

It is pertinent to note that in terms of section 8 of the Land Acquisition Act [*Chapter 20:10*],d the issuance of a section 8 order has the effect of divesting the person or entity against whom it is issued of ownership rights over the property. Section 8(2) of the said Act provides that:

> "Immediately after making an order in terms of subsection (1) an acquiring authority may ….(b) in relation to any agricultural land required for resettlement purposes exercise any right of ownership, including the right to survey, demarcate

> and allocate the land concerned for agricultural purposes, without undue interference to the living quarters of the owner or occupier of that land."

Further, subsection (3) thereof states that "subject to ten A, the effect of an order made in terms of subsection (1) shall be that the ownership of the land specified therein, shall, subject to subsection (5) of section seven, immediately vest in the acquiring authority whether or not compensation has been agreed upon, fixed or paid in terms of part V or VA and, subject to section nine, shall be free of all rights and encumbrances ……."

It is clear therefore that immediate upon the issuance of the section 8 order, the acquiring authority can exercise rights of ownership and deal with the land as it pleases.

The 1st respondents contended that the section 8 orders were not validly issued and in any case were subject of challenges in court. In many cases the challenges were successful. The 1st respondent therefore argued they remained owners of the land and so were entitled to the payments for sugarcane harvested by settlers and delivered to applicant. Whilst indeed the section 8 orders were being challenged at court, that per se did not deprive the acquiring authority the powers granted by the section 8orders for the time such orders were in force. Indeed till such time that the section 8 orders were nullified or set aside, the acquiring authority, was entitled to exercise rights of ownership as stated in section 8. The dermacation and allocation of the demarcated plots to who ever it deemed deserving was one such right. Who ever was allocated the land was naturally expected to carry out farming activities as required by the acquiring authority. I am of the view that for the time that the section 8 orders were in effect, the settlers, as beneficiaries chosen by the Acquiring Authority to farm the land, were entitled to proceeds therefrom. The 1st respondent made spurious attempts at showing that the allocation of the land to the settlers was not done properly as there was no land Resettlement Board in terms of the Agricultural Land Settlement Act [*Chapter 20:01*]. They also raised the issue of non-compliance with the sugar cane Production Control Act [*Chapter 18:09*] and the fact that the settlers had not obtained water permits from Zimbabwe National Water Authority.

Such arguments were in vain as they did not invalidate the powers granted by section 8 of the Land Acquisition Act [*Chapter 20:10*]

The settlers derived their rights and interest from having been allocated the land by the authority empowered to exercise rights of ownership in terms of section 8 for the period such section 8 orders were in effect. The exercise of such rights was only extinguished when the section 8 orders were nullified or set aside.

The 2nd to the last of the respondents contended that they were resettled by the government after the government had acquired the land in question. After being allocated the land they proceeded with farming as required of them by the acquiring authority. They were thus entitled to the proceeds. These respondents responded through an association CALLED Chiredzi Sugar Cane Farmers Association. The 1st respondent challenged the authority of such an association and its office bearers to represent the settlers.

Not much came out of such challenge. The settlers were entitled to grant authority to an entity of their choice to represent them as long as such entity had their mandate .

However, a notable problem was that the association chose to file standard opposing affidavits. Such affidavits did not take into account the perculiar circumstances of each case. Each respondent could thus not answer or reply to specific aspects that pertained to their individual piece of land. Even where 1st respondent said no settler had taken occupation, the association provided the same response as in cases where settlers had taken occupation. This anomaly was however not fatal to the crux of the matter. It is nevertheless necessary to proceed on individual cases.

SERE (PRIVATE) LIMITED v HIPPO VALLEY ESTATES LIMITED AND ERNEST ASHTON HC 8001/03

The applicant is the owner of the Remainder of Lot 1 of Essanty Estate. The applicant disputed the resettlement of 2nd respondent on plot 8 of the farm on the basis that the government had not complied with the provisions of the Agricultural Land Settlement Act [*Chapter 20:01*]. The applicant however admitted that a section 8 order was issued on 30 June 2002 but was nullified on 27 November 2002. No subsequent section 8 order was issued. The applicant therefore claimed all proceeds from the sugar cane delivered by 2nd respondent to 1st respondent.

The 2nd respondent had no response to the fact of the section 8 order having been nullified on 27 November 2002. Since the 2nd respondent's enjoyment of fruits from that land was based on the acquiring authority's powers in terms of section 8 of the Land Acquisition Act it follows that from 27 November 2002 the 2nd respondent had no basis to claim proceeds from sugar cane delivered after 27 November 2002.

The 2nd respondent's claim should thus be restricted to the cane delivered during the subsistence of the section 8 order. An order can thus be issued for applicant to be paid for

all cane delivered to 1st respondent serve the cane delivered during the period 3 June 2002 to 27 November 2002.

The 2nd respondent be paid for sugar can delivered during the period 3 June 2002 to 27 November 2002 if any.

HIPPO VALLEY ESTATES LIMITED v CHIWENGA ESTATES (PRIVATE) LIMITED AND 4 OTHERS HC 5830/03

In this case the 1st respondent contended that there was no section 8 order in force. The one that had been issued became a nullity on 26 June 2003 when the section 7 application was withdrawn at the Administrative Court in case No. LA3152/02. The effect of the withdrawal was that there was no application before the Administrative Court. The section 8 order lapsed as there was no indication that the section 7 application was never reviewed.

In the circumstances, as from the date of withdrawal of the section 7 application the right of ownership of the Land reverted to the 1st respondent. The 2nd to 5th respondents can therefore be paid for cane harvested and delivered during the subsistence of the section 8 order. The 1st respondent is entitled to payment for the cane delivered before the section 8 order was issued and after the withdrawal of the section 7 application.

HIPPO VALLEY ESTATES LIMITED v BON ESPOIR (PRIVATE) LIMITED AND OLIVER MATEMBA HC 6318/03 AND CHIUTSI CHITIMA HC 5796/03

The 1st respondent owned settlements 37 38 and lot 5. The 1st respondent contended that no one had been settled on its farms and so there was no dispute. In respect of both cases there is no opposition by the 2nd respondent. In the circumstances all the proceeds should be paid to the 1st respondent.

TRIANGLE LIMITED AND HIPPO VALLEY ESTATES LIMITED v ERIC RICHARD HARRISON and 4 OTHERS HC 10028/03

In this case the 1st respondent indicated that the 1st section 8 order was nullified on the 17 October 2002, another section 8 order was however issued on 19 November 2003. This second order was confirmed by the Administrative Court. The 1st respondent is

therefore entitled to payment for cane harvested and delivered prior to the issuance of the 1st section order, and for the period after the nullification of that 1st order and before the issuance of the 2nd order on 19 November 2003. The 2nd to 5th respondents must be paid for the cane harvested and delivered during the subsistence of the 1st order and from when the 2nd order was issued i.e. from 19 November 2003

HIPPO VALLEY ESTATES LIMITED v CHIREDZI NOMINEES (PRIVATE) LIMITED AND 22 OTHERS HC 5831/03

The 1st respondent contended that there was no section 8 order in place over the property. The only section 8 order that had been placed over the property was nullified on 14 March 2003 under case No. HC 2097/03. The other 22 respondents did not controvert that assertion. Their only contention being that the property was acquired by the government without alluding to the specific issue of the section 8 order.

The 1st respondent is therefore entitled to payment for cane harvested and delivered from the date of nullification of the section 8 order i.e 14 March 2003.

The other respondents are only entitled to payment for cane harvested and delivered during the life span of the section 8 order.

HIPPO VALLEY ESTATES LIMITED v CHIREDZI RANCHING COMPANY (PRIVATE) LIMITED AND 8 OTHERS HC 5821/03

The first respondent indicated that it had a licence to grow sugarcane on settlement 34 which it owned and settlement 40 owned by Mr Henning. On 12 March 2003 in case No HC 1391/03 a provisional order was granted allowing Mr Henning to continue with farming operations on settlement 40.

In case No. HC 4124/03 the first respondent sought the setting aside of the section 8 order pertaining to settlement 34. 1st respondent did not allude that application's fate. In the circumstances the 1st respondent be paid for sugar cane harvested and delivered before the issuance of the section 8 order. The rest of the respondents are to be paid for the sugar cane harvested and delivered when the section 8 order was in effect over the land in question.

HIPPO VALLEY ESTATES LIMITED v CHIREDZI RANCHING COMPANY AND 2 OTHERS HC 6311/03

The same scenario obtains in this case as the previous case as 1st respondent is the same company. The 1st respondent is to be paid for the paid when no section 8 order was in effect. The other respondents are to be paid for the sugar cane harvested and delivered during the subsistence of the section 8 order over the land in question.

HIPPO VALLEY ESTATES LIMITED v DENARII (PRIVATE) LIMITED AND 4 OTHERS HC 5804/03

This is one of those cases where the section 7 application was withdrawn at the Administrative Court on the 26th June 2003 in LA 3198/02. The other respondents had no answer to this. The 1st respondent should thus be paid for the sugar cane harvested and delivered before the issuance of the section 8 order and after the withdrawal of the section 7 applications on 26 June 2003.

HIPPO VALLEY ESTATES LIMITED v LYNDHURST ESTATES (PRIVATE) LIMITED and 2 OTHERS HC 6321/03

The 1st respondent owned settlement 39 which is the land in question. 1st respondent claimed payment for all deliveries of sugar cane to the applicant on the basis of its ownership of the settlement and its challenge of the land acquisition process. Such challenge included that the other respondents were not properly settled in terms of the law. The 2nd and 3rd respondents contended that they were entitled to payment for the deliveries they made as they were properly settled by the government. As with previous case this is a case where the 1st respondent should be paid for the sugar cane harvested and delivered when there was no section 8 order in place. The other respondents should be paid for the sugar cane harvested and delivered during the subsistence of section 8 order.

HIPPO VALLEY ESTATES LIMITED v L T ENGELS (PRIVATE) LIMITED AND 2 OTHERS HC 6320/03

The 1st respondent contended that there was no section 8 order over the property. The 2nd and 3rd respondents did not dispute that. They could not show that there was a section 8 order over the property. In the circumstances the 1st respondent be paid for the sugar cane harvested and delivered. The 2nd and 3rd respondents can only be paid for the period they show that a section 8 order was in effect.

HIPPO VALLEY ESTATES LIMITED v RIO ENTERPRISES AND 5 OTHERS HC 5811/03

The 1st respondent argued that all proceeds be paid to it. On section 8 order, the 1st respondent argued that there was no section 8 order over the property. The only section 8 order over the property was set aside by the high Court on 13 November 2003 in case No. HC 8351/02. The other respondents' response was just standard response as for all other respondents. Such response did not deal with specific aspects pertaining to the setting aside of the section 8 order and effect thereof. The 1st respondent is therefore entitled to payment for the sugar cane harvested and delivered after 13 November 2003 when the section 8 order was set aside.

The other respondents are entitled to payment for the sugar cane they harvested and delivered during the subsistence of the section 8 order.

HIPPO VALLEY ESTATES LIMITED v MARATHAN ESTATES (PRIVATE) LIMITED AND 3 OTHERS HC 5806/03

The same scenario obtains where the 1st respondent is to be paid for the sugar cane harvested and delivered for the period no section 8 order was in effect. The other respondents are to be paid for the sugar cane harvested and delivered during the subsistence of the section 8 order.

HIPPO VALLEY ESTATES LIMITED v MAPANZA ESTATES (PRIVATE) LIMITED AND 32 OTHERS HC 5823/03

The 1st respondent contended that the only section 8 order over the property became a nullity when it was overturned in terms of a high Court order dated 15 June 2003 in case No. HC 10379/02. The 2nd to the 33rd respondents maintained the already alluded to general stance. They had no specific response to the assertion that the section 8 order in respect of this land was set aside on 15 June 2003. That being the case, the 1st respondent is entitled to payment for the sugar cane harvested and delivered after 15 June 2003.

The rest of the respondents are entitled to payment for deliveries if any, before the 15th June 2003 when the section 8 order was in effect.

HIPPO VALLEY ESTATES LIMITED v KWA INGWE FARM (PRIVATE) LIMITED AND 10 OTHERS HC5824/03

The 1st respondent contended that presently there was no section 8 order over the property. The only section 8 order that had been placed over the property became a nullity when it was suspended by the High Court on 13 May 2003 in case No. HC 3652/03.

The 2nd to 11th respondents had no specific response to that contention. The 1st respondent is therefore entitled to payment for the sugar cane harvested and delivered after the 13th May 2003. The other respondents are entitled to payment for delivery made before 13th may 2003 when the section 8 order was in effect.

HIPPO VALLEY ESTATES LIMITED v ESPERANCE ESTATES LIMITED AND PATRICK MARUFU SIBANDA HC 5805/03

The 1st respondent said that it would not lay claim to any sugar cane delivered by the other respondents in the 2003 cane season and so there was no dispute in this case.

HIPPO VALLEY ESTATES LIMITED v FANTAISE FARMS (PRIVATE) LIMITED AND 18 OTHERS HC 5794/03

The 1st respondent contended that there was no section order 8 over the property. The only section 8 order that had been there was suspended in terms of a provisional order of the High Court dated 28 March 2003 in case No. HC 3158/03. The 2nd to 19th respondents had no response to that specific assertion serve for the general contention as contained in their standard affidavit. The 1st respondent should therefore be paid for the sugar cane harvested and delivered after the 28th March 2003. The rest of the respondents be paid for the sugar cane harvested and delivered before the 28th March 2003 when the section 8 order was in force.

It has not been easy to set exact date of deliveries as both parties did not in a number of cases provide exact dates of the section 8 orders. A recourse to the particular section 8 orders should clarify the period in question.

Accordingly it is ordered that Sere (Private) Limited and the 1st respondents be paid for deliveries made when the section 8 orders were not in force. The rest of the respondents are to be paid for deliveries made when the section 8 orders were in force.

Regarding costs I am of the view that the circumstances are such that each respondent in the interpleader proceedings pay their own costs.

All the respondents including Sere (Private) Limited are to pay applicants (Hippo Valley Estates Limited and Triangle Limited) costs as follows:
Sere (Private) Limited and 1st Respondents 50% and the rest of the respondents the other 50 per cent on the ordinary scale.

Messrs Scanlen And Holderness, legal practitioners for the applicant
Messrs Coghlan, Welsh and Guest, legal practitioners for Sere (Private) Limited and 1st respondents
Messrs Mutezo and Company, legal practitioners for rest of respondents

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