Judgment No. S.C. 50/2000
Civil Appeal No. 279/99

GRAHAM HENDRIE SCOTT v THE REGIONAL WATER AUTHORITY

SUPREME COURT OF ZIMBABWE
McNALLY JA, EBRAHIM JA & MUCHECHETERE JA
HARARE, JUNE 1, 2000

E Matinenga, for the appellant

J Dondo, for the respondent

McNALLY JA: At the hearing we dismissed this appeal with costs without calling on Mr *Dondo*. We indicated that our reasons would follow, and these are they.

The appellant (Scott) is a sugarcane farmer in the Lowveld. The respondent (the Authority) is the creation of the Regional Water Authority Act [*Chapter 20:16*] (the Act) and is the successor to what used to be called the Sabi-Limpopo Authority. Its functions, set out in s 27 of the Act, are broadly to "conserve and exploit the water resources of the area".

Scott objected to the price of water fixed "by the Authority" in 1997/8 and 1998/9. He sought a declaration by the court that the price fixed was "unlawful and void". He also objected to being charged for a minimum quantity of water whether he used it or not.

His application was dismissed in the High Court on the basis of three preliminary points which the court found to be valid. It was thus unnecessary to go into the merits.

The three points were these –

1. The application was one for review and thus was out of time by reason of non-compliance with Rule 259 of the High Court Rules, in the absence of an application for condonation.

2. The Minister of Lands and Water Resources should have been cited as a party.

3. There was no privity of contract between Scott and the Authority.

The first point is decisive. This is clearly an application for a review of the decision fixing the price. The fact that the relief sought is a declaration does not affect the nature of the application. I agree entirely with the learned judge and his reliance on the earlier High Court decision of *Matsuka v Chitungwiza Town Council & Anor* 1998 (1) ZLR 15.

That is really the end of the matter. I would, however, add the following remarks:

1. I hesitate to give a ruling on the second point about the joinder of the Minister, because I take the view that the application is misconceived. If s 27(4) of the Act had been properly understood it would have been

appreciated that if the fixing of the price was not done by the Authority under s 27(4)(a), then it was clearly done (as the Authority contended) by the appropriate Minister under s 27(4)(b). I agree with the learned judge that "the appropriate Minister" and "the Minister" are in this case the same person. So in the same breath one is saying that the Minister should have been joined and that therefore the basis of the case falls away.

2. I am entirely satisfied that there is no contractual relationship between the Authority and Scott. The whole purpose of the Water Supply Agreement, on which Scott relies, was to terminate the previous contractual relationship between those two parties and to create a new one between the consortium and Scott. It is the consortium which charges Scott a minimum tariff whether he uses the water or not.

I am thus strengthened in my conclusion on the preliminary point by the conviction that the application has no intrinsic merit either.

EBRAHIM JA: I agree.

MUCHECHETERE JA: I agree.

Scanlen & Holderness, appellant's legal practitioners

Chinamasa, Mudimu & Chinogwenya, respondent's legal practitioners