

23 February 2018

THE CAMPBELL CASE: ZIMBABWEAN LANDMARK FARM TEST CASE

TIME LINE

Mike Campbell (Pvt) Ltd v Zimbabwe

Mike Campbell (Pvt) Ltd et al. v. Republic of Zimbabwe is a case decided by the Southern African Development Community (SADC) Tribunal in Windhoek, Namibia. The Tribunal held that the Zimbabwean Government violated the organisation's treaty by denying access to the courts and engaging in racial discrimination against white farmers whose lands had been confiscated under the land reform program in Zimbabwe.

This is the time line of the case of William Michael Campbell of Mount Carmel farm and 77 additional commercial farmers whose case was joined to the Campbell case:

- ❑ **1999:** Mike Campbell [Private Limited] purchased Mount Carmel farm in the Chegutu district of Zimbabwe legally in 1999. (Every farm bought after 1980 had to be offered to the Government first for land redistribution and then deeds were stamped "No Government Interest" if they did not wish to purchase it.)
- ❑ **February 2000:** The Government-orchestrated land invasions began in February 2000, immediately after President Mugabe, who had become increasingly unpopular, lost a referendum to further entrench his presidential powers. Although Mugabe claimed this was a land reform programme designed to hand white-owned farmland to poor, landless black Zimbabweans, the primary beneficiaries have been the ruling ZANU-PF elite, notably Politburo members and their family members, security force officers, compliant judges and even church leaders. Initially, so-called "war veterans" were ferried onto farms, often in Government vehicles, displacing their owners and farm workers, leaving thousands homeless and destitute. Their tactics of intimidation, which included theft, violence on an appallingly brutal scale, murder and arson, caused a total breakdown of law and order across the country.
- ❑ **July 2001:** Amid large-scale land invasions by "war veterans", Campbell received a Government notice to acquire Mount Carmel farm, but the notice was declared invalid by the High Court.
- ❑ **2003:** Most commercial farmers had been displaced and more than 200,000 farm workers and their families – an estimated one million people – had lost their jobs and homes, as well as their access to farm schools, farm clinics and other social amenities. This was despite the fact that the Government's own land audit showed that 2.8 million ha of farmland lay idle.
- ❑ **January 2004:** The Land Acquisition Amendment Act was passed. This enables the Mugabe Government to block any legal action against it taking farms away from their owners. Once the farmer has been issued with this "legal" document, he is confined to his house and forbidden from doing anything on his land, even if he has a crop that needs to be harvested. Not abiding by these restrictions could mean two years imprisonment. The farmer can remain in his house for three more months, after which, he has to get out. There is no compensation.

- ❑ **July 2004:** A new notice of intent to acquire Mount Carmel was published in the official Government Gazette, but no acquisition notice was actually issued. However, two months later, according to court filings, "persons purported to occupy the farm on behalf of ZANU PF spokesman Nathan Shamuyarira, claiming the former minister had been allocated the farm." After three more preliminary notices to take the farm were published in 2004, Campbell applied to the High Court for a protection order.

Note: The Government of Zimbabwe had been attempting to seize Mount Carmel since July 2001 but these were at first thwarted by the High Court of Zimbabwe.

- ❑ **14 September 2005:** The Constitution of Zimbabwe Amendment (No. 17) Act of 2005 came into effect. Amendment 17 transferred title of all land previously "acquired" for resettlement purposes to the State. It prohibited court challenges to the acquisitions and allowed the Government to acquire any land that had been agricultural land in the last 50 years by simply publishing a notice of acquisition in the newspaper.
- ❑ **15 May 2006:** Lawyers for Mike Campbell launched proceedings in the Supreme Court of Zimbabwe challenging the constitutional validity of Amendment 17. This served to delay the eviction of the applicant, but it became clear that no permanent protection would be found within the Zimbabwe legal system since the court heard the constitutional challenge but reserved judgment for 6 months.
- ❑ **December 2006:** The Gazetted Land (Consequential Provisions) Act passed into law, requiring all farmers whose land was compulsorily acquired by the Government - and who were not in possession of an official offer letter, permit, or lease, to cease to occupy, hold, or use that land within 45 days and to vacate their homes within 90 days. Failure to comply is a criminal offence punishable by a fine and a maximum prison sentence of up to two years. Only a small number of farmers received an offer letter or lease. Although 800 commercial farmers subsequently applied for Government authority to remain on their farms, none was granted. (Dale Dore)
- ❑ **October 2007:** 11 white commercial farmers, including Mike Campbell, appeared before the Chegutu magistrate's court accused of failing to leave their gazetted farms. Their appeal against the conviction was rejected. The Zimbabwe Government started prosecuting Campbell for the unique offence of farming his own land - which he had developed into a thriving agricultural enterprise - and living in his own home on the farm.
- ❑ **5 October 2007:** As the Supreme Court had not responded to enquiries about the challenge to Amendment 17 mounted in May 2006, it was assumed that it had declined to exercise its jurisdiction. Mike Campbell therefore sought relief from the SADC Tribunal in Windhoek, Namibia. (Dale Dore)

[Note: The Tribunal was set up to ensure that SADC member states, including Zimbabwe, adhere to the SADC Treaty and Protocols, protect the rights of citizens, and ensure the rule of law. The scope of the jurisdiction of the SADC Tribunal, as stated in Article 15 (1) of the SADC Protocol, is to adjudicate upon "*disputes between States, and between natural and legal persons and States*". In terms of Article 15 (2), no person may bring an action against a State without first exhausting all available remedies, or unless the person is unable to proceed under the domestic jurisdiction of such State.]

- ❑ **11 October 2007:** Mike Campbell filed a case with the Tribunal challenging the acquisition of Mount Carmel farm. His application contended that the land acquisition process was unlawful under international customary law, the SADC Treaty and the African Charter on Human and People's Rights. Since the case was filed after the Supreme Court in Zimbabwe failed to issue a judgment on the challenge to Amendment 17, Campbell's application was deemed to be within the base and scope of the jurisdiction of the Tribunal. (Dale Dore)

Campbell's application sought an order from the Tribunal declaring, **first**, that Constitutional Amendment No. 17 violated his fundamental rights protected under Article 6 of the SADC Treaty and, **second**, requesting an interdict to stop the Zimbabwean Government from acquiring his farm.

- ❑ The Tribunal concluded that it had jurisdiction to hear the case because the dispute concerned "human rights, democracy and the rule of law", which are binding principles for members of the SADC.
- ❑ This landmark case, which was supposed to start on the 20 November 2007, marked the first case to be heard by the SADC Tribunal. Unfortunately the case was delayed since the fax machine in the office of President Mugabe was reportedly broken and the number to which the notice had been sent could not be verified.

The case was postponed to 4 December 2007, after which it was postponed again to 11 December 2007.

- ❑ **11 December 2007:** In reserving judgment after the hearing, the Tribunal issued an interim protection order which stipulated that the Zimbabwe Government 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 the farms occupied by the farmers, their employees and the families of the employees." Government representatives assured the Tribunal it would abide by the decision.

This interim relief order was repeated for the other interveners on 28 March 2008.

- ❑ **13 December 2007:** The SADC Tribunal, in its first decision since becoming functional in April 2007, ruled in favour of Campbell.
- ❑ **22 January 2008:** The Supreme Court of Zimbabwe finally delivered its judgment in the 15 May 2006 case (Campbell and other white farmers). The effect was to dismiss the applicants' entire challenge. Contrary to the accepted norms of natural justice and international law, it ruled that Parliament had the right to oust the jurisdiction of the courts to prevent judicial arbitrations between citizens and the State. The court also refused to countenance the charge that Amendment 17 discriminated against the applicants on the basis of race or colour. (Dale Dore)

This served to confirm the applicants' prior contention that all legal remedies within Zimbabwe had been exhausted. The only objection to the jurisdiction of the SADC Tribunal advanced by the Government of Zimbabwe was a failure on the part of the applicants to exhaust domestic remedies.

- ❑ **End January 2008:** Additional white commercial farmers who were still occupying their farms applied to be joined as interveners in Campbell's pending application before the Tribunal.

The Tribunal ordered the applications to be heard in March 2008 because the Zimbabwe Government said it required more time to consider and respond to the intervener applications.

- ❑ **25 March 2008:** The final hearing of the main action in the SADC Tribunal case was scheduled to commence but was postponed to 28 March.
- ❑ **28 March 2008:** Following the hearing, a total of 77 additional commercial farmers were granted leave to intervene. Interim relief similar to that given to Mike Campbell on 13 December 2007 was granted to 74 farmers since three were no longer residing on their farms.
- ❑ **7 May 2008:** In a letter to the Registrar of the Tribunal dated 7 May 2008, Zimbabwe's Deputy Attorney-General indicated that he would not be ready to proceed on 28 May 2008 and requested a postponement.
- ❑ **27 May 2008:** The legal representatives received information that a group of black resettled Zimbabweans intended to apply to intervene in the court proceedings.
- ❑ **28 May 2008:** The Tribunal convened and had to first deal with the application for further intervention on the behalf of the black resettled farmers. Approximately 300 farmers wished to intervene but the supporting documents were not in order.

The lawyer representing the black farmers admitted to having been approached at short notice and had therefore not had enough time to obtain all the necessary documentation. This was seen as a deliberate delaying strategy and after a brief adjournment the Tribunal ruled that the application for intervention was not in order, thereby refusing it.

An oral application for postponement of the main case by the Zimbabwe Government was then moved. This was on the basis that the Government had insufficient resources, particularly manpower, to complete the papers on time and, particularly, to gain access to the Applicants' authorities. The Tribunal granted a postponement, directing the Government to file all its papers by 18 June 2008. The hearing was postponed to 16, 17 and 18 July 2008.

- ❑ **29 June 2008:** Mike Campbell, his wife Angela and their son-in-law, Ben Freeth, who also lived on and farmed Mount Carmel farm, were abducted and brutally assaulted for nine hours late into the night by "war veterans" and Government militia. After being forced at gunpoint to sign a paper stating that they would withdraw from the SADC Tribunal case, they were driven to the small town of Kadoma, where they were abandoned, but managed to seek help. They were rushed to hospital for emergency medical treatment.
- ❑ **16 July 2008:** The case of Mike Campbell and the 77 farmers was heard in Windhoek.
- ❑ **17 July 2008: The first contempt application:** Filed a month previously, the first contempt application was also heard. The Zimbabwe Government attempted to block

the application on the grounds that they wanted further time to file papers. This request was refused because their explanation for the delay was deemed to be feeble. The Government's legal team was given 30 minutes to take instructions and to present their argument because they had already had more than 30 days to respond.

When they came back, they indicated to the Tribunal that they were not prepared to proceed and staged a walkout of the Tribunal led by the Zimbabwean ambassador to Namibia, who was sitting with the legal team.

- ❑ **18 July 2008:** The Tribunal ruled that the applicants had presented "abundant material" to show the existence of the failure on the part of the respondent (the Zimbabwe Government) and its agents to comply with the interim relief order of the Tribunal.
- ❑ **11 September 2008:** The Tribunal reserved judgement on the application. Tribunal Registrar David Mkandawire said the court was adjourned for judgement to study objections from the Zimbabwe Government lawyers.
- ❑ **28 November 2008:** The Tribunal's decision on this date addressed four main issues:
 - (1) Whether the Tribunal had jurisdiction to hear the case;
 - (2) Whether the plaintiffs had been denied access to domestic courts in violation of the SADC Treaty;
 - (3) Whether the Zimbabwean Government had discriminated against the plaintiffs on the basis of race, and
 - (4) Whether the plaintiffs were entitled to compensation.

Decision:

- (1) The Tribunal held that it had jurisdiction to hear the case, because Amendment 17 had eliminated the plaintiffs' access to the domestic courts, and the plaintiffs were therefore entitled to seek remedy before the Tribunal.
- (2) The Tribunal found that the plaintiffs had been deprived of their right to a fair hearing before being deprived of their rights.
- (3) On the racial discrimination issue, the Tribunal held that the actions of the Zimbabwean Government constituted indirect or "de facto" discrimination because implementation of Amendment 17 affected white farmers only.
- (4) Finally, the Tribunal held that the plaintiffs were entitled to compensation for the expropriation of their lands.

The Tribunal announced in its judgement that "by unanimity the Respondent [the Zimbabwe Government] is directed to take all necessary measures through its agents to protect the possession, occupation and ownership of the lands of the Applicants."

- ❑ The three exceptions were commercial farmer Christopher Jarrett [Luchabi Ranch, Nyamandlovu], and agricultural companies Tengwe Estates (Pvt) Ltd [Andrew Kockott, Urungwe] and France Farm (Pvt) Ltd [Lawrence Cumming, Victoria Falls] who had already been evicted from their lands. The Zimbabwe Government was directed to pay them fair compensation, on or before 30 June 2009.

Note: The amount of compensation was not laid down by the court and the applicants were required to submit comprehensive details of what fair compensation would entail.

Since this would be a critical test case that would determine the compensation parameters for the more than 4,000 dispossessed Zimbabwean farmers, it was vital for the Zimbabwean government that the compensation case should not be heard by the SADC Tribunal.

Immediately after the Judgement, the State-owned Herald newspaper reported that the then Minister of State for National Security, Lands, Land Reform and Resettlement in the President's Office, Didymus Mutasa, had responded that the Tribunal was “daydreaming.”

- ❑ **23 December 2008:** Mike Campbell made an urgent application to register the judgement in the High Court of Zimbabwe. The urgency of the application was not accepted but no reasons were ever given. Thereafter, a number of other applications were made to have a hearing to register the judgement but none of them were heard either. Meanwhile approximately two hundred additional white farmers were prosecuted for remaining on their farms, despite the SADC Tribunal judgement.
- ❑ **January 2009:** The Deputy Chief Justice from the Supreme Court of Zimbabwe rubbished the SADC Tribunal Judgement by saying “it is clear that the Tribunal lacked jurisdiction.” Prince Machaya, the deputy Attorney General, also wrote stating that it was Government’s position to continue the prosecution of farmers, despite the SADC Tribunal judgement.
- ❑ **February 2009 and March 2009:** Mike Campbell faced a number of threatening invasion situations on his farm.
- ❑ **March 2009:** The Zimbabwe High Court nullified the SADC Tribunal ruling which said white farmers whose farms were acquired by Government for resettlement purposes could remain on the farms because they had legal title to the farms. The court claimed the SADC Tribunal's decisions did not apply and could not be enforced in Zimbabwe unless Parliament ratified the Protocol that set up the Tribunal.
- ❑ **3 April 2009:** Mike Campbell’s home was invaded by a gang led by Lovemore Madangonda (known as “Landmine”) who worked for ZANU PF heavy weight Nathan Shamuyarira, a former minister and retired Information Secretary. Over the next few days various workers were badly beaten by the invaders – one of them sustaining a fractured skull. Mike Campbell and his wife were eventually forced out of their fully furnished house on 5 April 2009 and were unable to return as the invaders based themselves there.
- ❑ **9 April 2009:** All 150 farm workers were forced to stop working and the invaders took the guards’ weapons and threatened them with death. The 50 tons of export mangoes in the pack-shed were left to rot. Invaders broke into the shed and took Mike Campbell’s tractors to reap the rest of the crops for themselves. Hundreds of thousands of US dollars of crops were stolen.
- ❑ **17 April 2009:** Deputy Prime Minister Arthur Mutambara, along with both Ministers of Home Affairs in the coalition Government, the Minister of State in the Prime Minister’s Office and the Minister of Lands, visited Mount Carmel farm. They said that Campbell’s workers could continue to work and that he could live in his house and reap the remainder of his crops. They stipulated that the invaders must abide by any High Court

Orders that might come out. That afternoon, in defiance of the Ministers, the farm workers who assembled to try to resume farming activities were all chased away again by the invaders and were not allowed to work.

- ❑ **20 April 2009:** The Zimbabwean High Court gave a provisional order evicting the invaders. This was served on them the next day, but the situation became very hostile as almost all the invaders were armed with guns. The police consistently failed to give assistance to the deputy sheriff to evict the invaders as per the High Court Order over the next 6 months while the invaders reaped Campbell's crops.
- ❑ **27 April 2009:** Armed invaders chased Ben Freeth's workers away on the other side of Mount Carmel farm. Freeth subsequently received death threats from the invaders.
- ❑ **30 April 2009:** Another provisional order was gained in the High Court reinforcing the first, but still nothing was done by the police to ensure that it was enforced.
- ❑ **5 May 2009:** In response to the second High Court Order being served on the invaders, Ben and Laura Freeth's garden and driveway were ploughed up in the night inside the fence right outside their house by "Landmine" and his invaders. There were threats to burn down their house and burning sacks were lit under the thatched roof. Peter Asani, one of Campbell's foremen, was abducted from his house by the invaders who beat his feet so badly that he was on crutches, with a cast on one of his feet, until July. All the workers then had their electricity and water cut off by the invaders in an effort to force them to move off the farm.
- ❑ **7 May 2009:** The invaders surrounded the Freeths' house with armed men and guns were pointed through the windows. The invaders chased away the 40 linen workers on Laura's linen project. Spanish journalists were in the house at the time and the Freeths were concerned for their safety. The invaders eventually left but returned the next day, again with guns, to chase the workers away. They were unable to work for some weeks.
- ❑ **14 May 2009:** "Landmine" arrived at the Freeths' house and threatened "bloodshed" while waving a handgun at the back door and pointing it at a guest.
- ❑ **25 May 2009 (Africa Day):** The invaders lit a substantial fire in the Freeths' garden and, with threats and further efforts to intimidate the family – which included making a great deal of noise - tried to get them out of their house. The next night approximately 15 of the invaders broke into the thatched homestead and brought burning tyres through the front door and into the courtyard. The Freeths young children (aged 4, 7 and 9) were threatened and one of the invaders shouted that they would eat them. Another invader made frightening hyena noises. When the invaders finally left, they circled the house, whooping like hyenas.

On other SADC Tribunal-protected farms similar state-sanctioned invasions were also taking place with total impunity. No move was made by the Zimbabwe Government to compensate those farmers who were off their farms, despite the Tribunal's order to do so.

- ❑ **5 June 2009: The second contempt application:** The SADC Tribunal heard a second contempt application against the Zimbabwe Government where Campbell and another applicant, Richard Thomas Etheredge, filed a new application to declare the Government

of Zimbabwe in contempt of court. Their objective was to persuade SADC to take action regarding the Zimbabwe Government's failure to uphold the SADC Treaty - and to enforce the Tribunal's judgement of 28 November 2008.

- ❑ Despite the SADC Tribunal judgments, "Landmine" continued to use the tractors he had stolen from Campbell to steal the entire maize, sunflower and orange crops without Campbell, the rightful owner of those crops, being able to reap a single maize cob, sunflower head or orange. This theft was reported to police on various occasions during the ensuing weeks and months but the police did nothing to stop it.
- ❑ **March, April, November 2009:** Various letters were hand-delivered to Morgan Tsvangirai, Prime Minister in the coalition Government, regarding the breakdown in the rule of law and the contempt, and an investigation into this was requested. However, no replies were received.
- ❑ **20 August 2009:** The SADC Tribunal issued a costs award (or "taxation award" as it is known in legal terminology) in favour of the farmers (the complainants) in the Campbell contempt case of 5 June 2009. In total, the bill was taxed at US\$5,816.47 or R112,780. No payment was forthcoming from the Zimbabwe Government.
- ❑ **30 August 2009:** Four worker families were made homeless, as well as the Freeths, when their houses were burnt down. The home industry factory that employed 40 women was also burnt down. Although arson could not be proved, the fire was lit in the south from which a strong wind was blowing and being a Sunday, the arsonists would have known that the workers were not there to fight it. The invaders were busy driving around with a stolen 2,000 litre spray tank on a stolen tractor that day and would not come to assist. If the Campbells and Freeths had been able to use their own equipment, they would have been able to put out the fire before it burnt down the houses and factory. The Freeths and their workers lost almost everything they possessed.
- ❑ **31 August 2009:** 10 tons of fertiliser and other items were stolen by the invaders on Mount Carmel but the police did not arrest any of them.
- ❑ **2 September 2009:** Mike and Angela Campbell's house was also burnt down, along with almost all of its contents.
- ❑ **8 September 2009:** A bomb was exploded by the army and the police near to the Campbell's house. This was presumably to intimidate the Campbells and Freeths and prevent them from returning to the house. When Ben Freeth went to the house some days later to conduct a loss assessment, he was arrested by two policemen who said that he was not allowed there. One was bare-chested and carried an FN assault rifle. Freeth was taken to the police station along with a news crew that was with him. He challenged the police, explaining that he had every right to be there as there were High Court Orders and a SADC Tribunal judgment that allowed him and his family to farm and live there. The police explained that the law under which he was being taken away was "private and confidential". He was eventually released later that day.
- ❑ **2 September 2009:** The Zimbabwe Government announced its decision to withdraw from the Tribunal. This was despite having among other things signed the SADC Treaty and its amendments, as well as the Protocol establishing the Tribunal. The Government had also appointed a judge to the Tribunal, had participated in the Tribunal proceedings

and had told the court it would abide by its decisions. Under the Vienna Convention, such action cannot take place unilaterally. This disregard for the SADC Treaty by Zimbabwe as a member and a signatory is yet to be deliberated by the SADC community.

- ❑ **15-16 September 2009:** Representatives of the premier regional bar associations and rule of law institutions on the African continent gathered in Arusha, Tanzania to among other things reflect on the state of the rule of law in Africa and the current state of regional and sub-regional judicial organs.
- ❑ **17 September 2009:** Afterwards, the representatives issued a communiqué in which they implored SADC and the African Union (AU) leadership to: “Strengthen and defend its institutions of justice when they make decisions, which are within their competencies.”

They warned that “Failure by the SADC and AU leadership to vigorously defend regional and sub-regional judicial organs from such a blatant assault (by the Zimbabwe Government) is likely to have a contagion effect throughout the continent which is so desperate for strong institutions of democracy and rule of law to protect the rights of the people, assure investors of the sanctity of contract and availability of credible enforcement mechanisms, and generally promote socio-economic development on the continent.”

- ❑ **November 2009:** The North Gauteng High Court in Pretoria made an order in terms of which the Government of South Africa undertook to respect and honour the judgments by the SADC Tribunal in favour of commercial farmers in Zimbabwe, and to uphold the rights and remedies of victims of Zimbabwe’s unlawful land expropriation exercise. The court’s order opened the way for registering the SADC Tribunal’s judgments in South Africa and to pursue other remedies. The proceedings were instituted pursuant to revelations the previous week that the Government of South Africa intended to enter into a Bilateral Investment Promotion and Protection Agreement (BIPPA) with Zimbabwe on 27 November. The BIPPA was generally understood to have the effect of excluding the enforcement of the SADC Tribunal’s orders, and exempting Zimbabwe from liability for past human rights violations.
- ❑ **February 2010: South African High Court ruling:** South Africa’s North Gauteng High Court ordered that the SADC Tribunal rulings against the seizure of farmers land in Zimbabwe should be registered, recognised and enforceable by the South African Government.
- ❑ **30 March 2010:** Acting on behalf of Mike Campbell, South Africa’s civil rights group, AfriForum, seized a luxury property in Cape Town belonging to the Zimbabwe Government. AfriForum warned that if the Zimbabwe Government did not respond within the next two months, the property, bought sixteen years previously for ZAR500 000, would be auctioned off to cover the ZAR150 000 cost order awarded by the SADC Tribunal in the Campbell case on 20 August 2009. *(The amount listed then was R112,780. There was a further costs award?)*
- ❑ **16 April 2010:** The SADC Finance and Investment Protocol came into force on 16 April 2010. It had been signed on 18 August 2006.

- ❑ **30 April 2010:** The Jarrett, Kockott and Cumming legal case was lodged with the SADC Tribunal. This was in response to the failure of the Zimbabwe Government to pay fair compensation to these former commercial farmers/farming enterprises as per the SADC Tribunal judgment in the Campbell case of 28 November 2008.
- ❑ **June 2010: The third contempt application – with an enforcement order:** The third contempt application in the Tribunal dealt with the judgment of the Zimbabwe High Court that land reform was “public policy” and therefore for the “public good”. The application also dealt with the continued incarceration of commercial farmers, their show trials, the severe intimidation of both them and their workers and the general selective application of the law in Zimbabwe. This allows the homes and livelihoods of hundreds of thousands of people to be taken without compensation or any due process of law and the land to become derelict with the infrastructure on the farms asset stripped.
- ❑ **16 July 2010:** In its judgment, the Tribunal found the Zimbabwe Government in contempt for a third time and held that Zimbabwe persisted with its non-compliance with earlier Tribunal decisions of **November 2008** and **June 2009**, respectively. Accordingly, the Tribunal stated that it would once again report Zimbabwe’s non-compliance to the next summit of SADC Heads of State. The Tribunal once again awarded costs against the Zimbabwe Government.
- ❑ **17 August 2010:** The Summit of the SADC Heads of State and Government decided "that a review of the role functions and terms of reference of the SADC Tribunal should be undertaken and concluded within 6 months."
- ❑ **22 November 2010: The South Gauteng High Court ruling:** The South Gauteng High Court in Johannesburg ruled that the Zimbabwe Government-owned property situated at 28 Salisbury Road in Kenilworth, Cape Town, was of a commercial nature and may therefore be attached and auctioned to satisfy part of the Zimbabwe Government’s debts related to the case involving commercial farmers Louis Fick, Mike Campbell and Richard Etheredge.
- ❑ **9 December 2010: Barry L. T. Gondo & Others v Republic of Zimbabwe:** The SADC Tribunal ordered the Zimbabwe Government to pay compensation of nearly US\$17 million to nine victims of organised violence and torture who suffered shocking brutality at the hands of the army and police. (Not sure if you want to mention this but it will have influenced the decision to suspend and then shut down the Tribunal)
- ❑ **February 2011:** The independent review of the SADC Tribunal, commissioned by the SADC Summit and conducted by WTI Advisors Ltd, Geneva, found that SADC law should be supreme over domestic laws, and all decisions made by the court should be binding and enforceable within all Member States.
- ❑ **April 2011:** Mike Campbell and another dispossessed farmer, Luke Tembani, filed an application with the SADC Tribunal asking for an order that would ensure the SADC Tribunal continued to function in all respects as established by Article 16 of the SADC Treaty.
- ❑ **May 2011:** The SADC Heads of State illegally suspended the SADC Tribunal and the judges were unilaterally dismissed.

- ❑ **February 2012:** Luke Tembani and Ben Freeth took their case against SADC leaders to the African Commission on Human and People’s Rights (ACHPR) in the hope the case would be handed to the Commission’s human rights court, the African Court on Human and People’s Rights. In response, the Commission said it would consider the case.
- ❑ **August 2012:** The SADC Heads of State agreed to “renegotiate the Protocol” of the SADC Tribunal so that its jurisdiction was restricted to disputes between Member States.
- ❑ **20 September 2012: South African Supreme Court ruling:** South Africa’s Supreme Court of Appeal in Bloemfontein handed down a 23-page judgment in the appeal of the Zimbabwe Government against the North Gauteng High Court’s registration and enforcement of a SADC Tribunal ruling and the subsequent attachment of Zimbabwe Government-owned property in Cape Town. Despite being subject to the jurisdiction of the Tribunal, the Zimbabwe Government declined to pay the costs order levied by the Tribunal in June 2009. In its ruling, the Supreme Court of Appeal dismissed the Zimbabwe Government’s appeal with costs, which included the costs of two counsel.
- ❑ **October 2012:** The ACHPR deliberated on the issue in its 52nd Ordinary Session and found the Tembani/Freeth application to be admissible. In November, the Commission directed that the claim be admitted for consideration.
- ❑ **End January 2014:** The AU Summit deliberated on the ACHPR decision and at the same time made the Chairman of the SADC, President Mugabe, also the Vice Chair of the AU. President Mugabe (90) was appointed Chairman of the AU on 30 January 2015.
- ❑ **1 March 2014:** The applicants learnt that while the ACHPR criticised the SADC States, held them collectively liable and condemned their denial of people access to their own courts, it said that it was powerless because Articles 7 and 26 of the African Charter refer only to *national* courts – and the SADC Tribunal was a *regional* court. It concluded: “The Commission does not find any Charter obligation on the respondent States to guarantee the independence, competence and institutional integrity of the SADC Tribunal.”
- ❑ **21 April 2015:** The Law Society of South Africa (LSSA) launched an application in the North Gauteng High Court, Pretoria to declare the actions of President Jacob Zuma, as well as the Ministers of Justice and International Relations and Cooperation, Mr Masutha and Ms Nkoana-Mashabane, illegal regarding the South African Government’s participation in the process which led to the disbandment of the SADC Tribunal.

The LSSA said they had voted for, signed and planned to ratify the SADC Summit Protocol in 2014. Unlike the previous Protocol, the 2014 Protocol deprived citizens in the SADC region – including South Africans – of the right to refer a dispute between citizens and their Government to a regional court if they failed to find relief in their own courts. Therefore, by signing the 2014 Protocol, the President infringed the right of South African citizens to access justice in terms of our Bill of Rights. “As the Protocol now stands, it limits the jurisdiction of the SADC Tribunal to disputes only between Member States – and no longer between individual citizens and states – in the SADC region,” the LSSA said.

- ❑ **24 July 2015:** Four dispossessed Zimbabwean commercial farmers and two Zimbabwean agricultural companies, applied to join the LSSA case. They were Luke Tembani (a former black commercial farmer), and Campbell case applicants Ben Freeth, Richard

Etheredge and Christopher Jarrett, as well as two agricultural companies [Tengwe Estates (Pvt) Ltd and France Farm (Pvt) Ltd].

They were represented by South African civil rights group AfriForum. The applicants had successfully participated in various court cases before the SADC Tribunal and in all cases, the Tribunal had ruled against the Zimbabwe government. The farmers had been denied the right to seek justice in Zimbabwe through policies and measures that had deprived them of their property rights and failed to uphold their human rights – and those of their workers - during the illegal and violent farm invasions.

- ❑ **8 September 2015:** The North Gauteng High Court ordered President Jacob Zuma as well as the Minister of Justice and Constitutional Development, Michael Masutha and the Minister of International Relations and Co-operation, Maite Nkoana-Mashabane to file affidavits in the court by Monday, 21 September 2015. In these affidavits, they had to submit reasons why they did not want the four Zimbabwean farmers and two Zimbabwean agricultural companies to enter as party to the court application of the Law Society of South Africa – to have President Zuma’s involvement in the disbandment of the SADC Tribunal declared illegal and unconstitutional. Permission was granted for the farmers to join the case.
- ❑ **21 September 2015:** International legal history was made when the first sale in execution of a Zimbabwe Government-owned property in South Africa took place as a direct result of President Robert Mugabe's human rights abuses in his country. The house was attached by AfriForum acting for Zimbabwean farmers Fick, Campbell and Etheredge because the Zimbabwe Government had failed to honor cost orders of South Africa’s High Court, Supreme Court of Appeal and the Constitutional Court.
- ❑ **8 January 2016:** The South African residence located at 28 Salisbury Road in Kenilworth, Cape Town, which previously belonged to the Zimbabwean Government, was registered in the name of its new owner, a private property investor from Cape Town, after the property was sold at a public auction for R3,7 million on 21 September 2015. The Sheriff of Wynberg was then able to distribute the proceeds of the sale pro-rata between three judgment creditor parties who attached the property. The registration of the property brought finality to a six year-long legal battle which AfriForum managed on behalf of Zimbabwean farmers who were affected by Robert Mugabe’s controversial land grabs. It was also the first time in international legal history that a litigation process regarding human rights violations, that were instituted by private individuals against a State, led to the attachment, sale in execution and transfer of the particular State’s assets in a neighbouring country.
- ❑ **January 2017:** A meeting was held with AfriForum in Pretoria regarding the Jarrett, Kockott and Cumming case that had been lodged with the SADC Tribunal on 30 April 2010, and the Law Society of South Africa case launched on 21 April 2015. It was agreed that in addition to the four dispossessed Zimbabwean farmers and two agricultural companies who had joined the LSSA case, there would be a 4th Applicant. This would be a class action of farmers who could join in under the AfriForum banner. Any farmer, regardless of nationality, would be able to join.
- ❑ **August 2017:** Dispossessed commercial farmers Dave Conolly, Ian Ferguson and various other individual investors launched a new international legal initiative to seek justice and compensation for the loss of their farms and livelihoods and to stop the ongoing farm

seizures. On August 16 and 17, formal notice to initiate proceedings was served by the farmers' legal team on President Robert Mugabe, three of his ministers and the Zimbabwean government collectively under the SADC Finance and Investment Protocol. It was noted that Zimbabwe continued to fail to comply with its obligations under international law in respect of the judgment delivered by the SADC Tribunal in the Campbell case, and to request consultations to resolve the ongoing dispute.

- **5 February 2018:** The Law Society of South Africa's long-delayed hearing of the court case against South African President Jacob Zuma and his ANC government for their role in the closure of the SADC Tribunal, took place at the High Court in Pretoria. It was attended by the Zimbabwean farmers' legal team and one of the dispossessed commercial farmers. Judgment is expected before the end of February 2018.

ENDS

For further information, please contact:

Ben Freeth:
Executive Director
Mike Campbell Foundation
Zimbabwe
Mobile: +263 773 929 138
E-mail: freeth@bsatt.com