

4 June 2009

## ZIMBABWEAN FARM TEST CASE – TIME LINE

The case of William Michael Campbell of Mount Carmel Farm in Zimbabwe and 77 additional commercial farmers whose case was joined to the Campbell case:

- 1999: Mike Campbell purchased his land 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.) <http://infoex.hemscott.net/MESSAGES/1552221.HTM>
- 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 main beneficiaries have been the elite – security force officers, Politburo members, their family members and even judges. So-called "war veterans" were ferried onto farms, often in government vehicles, displacing their owners and farm workers. This caused a total breakdown of law and order, resulting in widespread intimidation, theft, violence, murder and arson across the country.
- The government of Zimbabwe has been attempting to seize Mount Carmel since 22 July 2001. These attempts were at first thwarted by the High Court of Zimbabwe.  
[http://www.thezimbabwean.co.uk/index.php?option=com\\_content&view=article&id=13001:campbell-case-heads-of-argument-summary&catid=31:top%20zimbabwe%20stories&Itemid=66](http://www.thezimbabwean.co.uk/index.php?option=com_content&view=article&id=13001:campbell-case-heads-of-argument-summary&catid=31:top%20zimbabwe%20stories&Itemid=66)
- On 14 September 2005, the Constitution of Zimbabwe Amendment (No 17) Act 2005 came into effect. Amendment 17 transferred title of all land previously acquired for resettlement purposes to the state, prohibited court challenges to the acquisitions and allowed the government to acquire any agricultural land for any purpose simply by publishing a notice of acquisition.
- On 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 applicants, but it became clear that no permanent protection would be found within the Zimbabwe legal system.  
[http://www.thezimbabwean.co.uk/index.php?option=com\\_content&view=article&id=13001:campbell-case-heads-of-argument-summary&catid=31:top%20zimbabwe%20stories&Itemid=66](http://www.thezimbabwean.co.uk/index.php?option=com_content&view=article&id=13001:campbell-case-heads-of-argument-summary&catid=31:top%20zimbabwe%20stories&Itemid=66)
- In 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. Only a small number of farmers received an offer letter or lease. Failure to comply is a criminal offence punishable by a fine and a maximum prison sentence of up to two years.
- On 5 October 2007, the Campbell's application was lodged before the SADC Tribunal in Windhoek, Namibia.

- On 11 October 2007 the applicants filed a case with the Tribunal challenging the acquisition of Mount Carmel farm.
- This landmark case was supposed to start on the 20 November 2007 and 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.  
[http://www.iss.co.za/index.php?link\\_id=24&mlink\\_id=5324&link\\_type=12&mlink\\_type=12&mlink\\_id=3](http://www.iss.co.za/index.php?link_id=24&mlink_id=5324&link_type=12&mlink_type=12&mlink_id=3)
- On 13 December 2007, an interim relief order was granted by the Tribunal. It stipulated that the Zimbabwean 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.

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

- Also on 13 December 2007, the Southern African Development Community (SADC) Tribunal in Namibia, in its first decision since it became functional in April 2007, ruled in favour of Michael Campbell, who was contesting the compulsory government acquisition of his farm.

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. According to the protocol establishing the Tribunal, a person can bring a case after exhausting all available remedies or when unable to proceed under domestic jurisdiction.

Campbell brought his case to the Tribunal after the Supreme Court in Zimbabwe failed to issue a judgment on the case. The Tribunal issued an interim protective order which prohibited the government from evicting or allowing the eviction of or interference with the farm, its owners, employees, or property pending a decision by the Tribunal on the issue of the legality of the contested expropriation, Government representatives assured the Tribunal it would abide by the decision.

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- On 22 January 2008, the Supreme Court of Zimbabwe finally delivered its judgment in the 15 May 2006 case. The effect was to dismiss the applicants' entire challenge. This serves 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.  
[http://www.thezimbabwean.co.uk/index.php?option=com\\_content&view=article&id=13001:campbell-case-heads-of-argument-summary&catid=31:top%20zimbabwe%20stories&Itemid=66](http://www.thezimbabwean.co.uk/index.php?option=com_content&view=article&id=13001:campbell-case-heads-of-argument-summary&catid=31:top%20zimbabwe%20stories&Itemid=66)

- 25 March 2008: The final hearing of the main action in the SADC Tribunal case was scheduled to commence but was postponed. During January, additional white commercial farmers who were still occupying their farms had applied to be joined as interveners in pending application before the Tribunal.
- The Tribunal ordered the applications to be heard in March 2008 because the Zimbabwean government said it required more time to consider and respond to the intervener applications.
- Following the hearing on 28 March 2008, 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 Zimbabwean intended to apply to intervene in the court proceedings.
- On 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 government of Zimbabwe was then moved. This was on the basis that the government of Zimbabwe 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 file all its papers by 18 June 2008. The hearing was postponed to 16,17 and 18 July 2008.
- On 29 June 2008, Mike Campbell, his wife Angela and their son-in-law Ben Freeth, who also lives and farms on Mount Carmel farm, were abducted and brutally assaulted for nine hours by "war veterans" and militia. After being forced at gunpoint to sign that they would withdraw the case, they were dumped on the outskirts of the small town of Kadoma.
- On 16 July 2008, the case of the 77 farmers, including Mike Campbell, was heard in Windhoek. A contempt application filed a month previously was also heard.
- On 17 July 2008, the contempt application was heard. The Zimbabwean 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. They were 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 their walkout of the Tribunal led by the Zimbabwean ambassadress to Namibia, who was sitting with the legal team.

- On 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 Zimbabwean government) and its agents to comply with the interim relief order of the Tribunal.
- On 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 Zimbabwean government lawyers.
- On 28 November 2008 the Tribunal announced its judgement which said 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.”
- Immediately after the Judgement the State owned Herald reported Minister Didymus Mutasa as saying that the Tribunal was “day dreaming.”
- On 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. Since then a number of other applications have been made to have a hearing to register the judgement but none of them have been heard. Meanwhile over a hundred prosecutions of white farmers for being on their farms continue despite the SADC Tribunal Judgement.
- In January 2009 the Deputy Chief Justice from the Supreme Court of Zimbabwe rubbished the SADC Tribunal Judgement by saying that “it is clear that the Tribunal lacked jurisdiction.” Prince Machaya, the deputy Attorney General also wrote to say that it was Government’s position to continue the prosecution of farmers despite the SADC Tribunal Judgement.
- In February 2009 and March 2009 Mike Campbell faced a number of threatening invasion situations on his farm.
- On the 3 April 2009 Mike Campbell’s home was invaded by a gang led by Lovemore Madangonda [known as “Landmine”] who works for ZANU PF heavy weight Nathan Shamuyarira. 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 the 5 April 2009 and have not been able to return since that date as the invaders have based themselves there.
- By the 9 April 2009 all 150 farm workers had been stopped from working and the invaders had taken the guards’ weapons and threatened them with death. The 50 tons of export mangoes in the pack-shed was left to rot. Invaders had broken into the packshed and taken Mike Campbell’s tractors to reap the rest of the crops for themselves. Hundreds of thousands of US dollars had been taken so far.
- On 17 April 2009 Deputy Prime Minister Arthur Mutambara along with both Ministers of Home Affairs; the Minister of state in the Prime Ministers Office, and the Minister of Lands came to visit Mount Carmel Farm. They said that Mike

Campbell's workers could continue to work and that Mike Campbell could live in his house and reap his crops. They stipulated that the invaders must abide by any High Court Orders that might come out. That afternoon the workers were all chased away again and to date are still not allowed to work.

- ❑ On 20 April 2009 the Zimbabwean High Court gave a provisional order evicting the invaders. This was served on the invaders 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 weeks while the invaders reaped Mike Campbell's crops.
- ❑ On 27 April 2009 armed invaders chased Ben Freeth's workers away on the other side of Mount Carmel Farm. Ben Freeth subsequently received death threats from the invaders.
- ❑ On 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.
- ❑ On the 5 May 2009 Ben and Laura Freeth had their garden and driveway ploughed up in the night inside their fence right outside their house by "Landmine" and his invaders. There were threats to burn down his house and burning sacks were lit under the thatch roof. Peter Asani, one of Mike Campbell's foremen was abducted from his house by the invaders who beat his feet so badly that he is still on crutches with a cast on one of his feet. It is only due to come off in July.
- ❑ On the 7 May 2009 the invaders surrounded Ben and Laura Freeth's house with armed men and guns were pointed through the windows. The invaders chased away the 40 linen workers on Laura Freeth's linen project. Spanish journalists were in the house 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.
- ❑ On 14 May "Landmine" arrived at the Freeth's house and threatened "blood shed" while waving a handgun at the back door and pointing it at a guest.
- ❑ On Africa Day, 25 May, the invaders lit a substantial fire in the Freeth's 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 Freeth's 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 they finally left, they circled the house, whooping like hyenas.
- ❑ The hearing set down for Friday 5 June 2009 is to endeavour to get SADC to take action regarding the Zimbabwe Government's failure to uphold the SADC Treaty and to persuade SADC to enforce the Tribunal's judgement of 28 November 2008.

ENDS

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Ben and Laura Freeth on Mount Carmel farm with their three children, Anna (4), Joshua (9) and Stephen (7)