Judgment No. HB 75/06
Case No. HC 1391/06
X-Ref HC 1397/06

LANGTON T MASUNDA

Versus

MINISTER OF STATE FOR NATIONAL SECURITY, LANDS, LAND REFORM AND RESETTLEMENT

And

JOHN LANDA NKOMO

IN THE HIGH COURT OF ZIMBABWE
BERE J
BULAWAYO 7 JULY & 20 JULY 2006

V Majoko for the applicant

Review Judgment

BERE J: On 7 July 2006, after reading the documents filed of record I made the following order in chambers.

"It is ordered that:

1. The decision of the 1st respondent to withdraw the offer of land made to the applicant be and is hereby set aside.
2. Applicant be and is hereby reinstated in his occupation and use of the land he was allocated by the 1st respondent and to his occupation of Jijima Lodge and its environs.
3. 1st and 2nd respondent and their agents including members of the Zimbabwe Republic Police be and are hereby interdicted, restrained and prohibited from interfering with the applicant's occupation and use of the land allocated to the applicant, including Jijima Lodge and its environs.
4. The respondents pay the costs of this application jointly and severally, the one paying the other to be absolved."

The following are the reasons which prompted me to grant the

order.

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By letter of 13 July 2002 from the Ministry of Lands, Agriculture and Rural Resettlement the applicant was made one of the beneficiaries of the land reform programme – a programme undertaken by the Government of Zimbabwe in an effort to address land imbalances in this country. That programme has been hailed nationally as it has immensely benefited and economically empowered many Zimbabweans.

Internationally the programme has received mixed reactions. Generally, in this country the programme is largely seen as the single cause of the isolationist policy pursued against this country by some western countries led by the former colonial power – Britain. It is not intended in this judgment to dwell a lot on the pros and cons of the land reform programme in this country. Suffice it to say it has benefited both the rich and the poor in this country.

The applicant was one of those offered by letter Volunteer Farms 47, 48 and 49 by the Minister of Lands, Agriculture and Rural Resettlement before the land portfolio was moved to the first respondent. In accordance with paragraph four of the offer letter the applicant signified his acceptance of the offer made by the Minister of Land by signing and dispatching his acceptance in the manner indicated. Thus, there was a clear contractual relationship

between the applicant and the Ministry concerned.

Having made enquiries as regards the status of Jijima Lodge *vis-à-vis* the land allocated to him, the applicant was assured by those representing

the first respondent that the lodge was part of the land allocated to him. The applicant went on to pour his resources in developing the hitherto abandoned and dilapidated lodge until it reached a stage where it became a hub of tourist attraction.

As fate would have it the lodge subsequently caught the attention of the second respondent who is the Speaker of the House of Assembly in Zimbabwe who also had been allocated land adjacent to the applicant. The second respondent claimed that Jijima Lodge was in fact part and parcel of his land and he sought to evict the applicant. For sometime now the second respondent has been embroiled in the ownership wrangle of Jijima Lodge with the applicant.

On 2 February 2006 I had the privilege of dealing with an application for summary judgment by the second respondent which was meant to evict the applicant. After carefully assessing the material that was presented before me by counsel for both the applicant and the second respondent I felt legally inclined to dismiss

the application for summary judgment and held that the rights of the parties be determined at a fully fledged trial. That decision was made on 9 February 2006.

I am advised, and reliably so, that the dismissal of the application for summary judgment was followed by the formal withdrawal of the main action for eviction against the applicant by the second respondent. After the withdrawal of the main eviction action the second respondent continued to threaten the applicant with his forced removal from the lodge.

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Feeling vulnerable and insecure the applicant made an urgent chamber application seeking an order restraining the 2nd respondent from

interfering with the applicant's occupation of Jijima Lodge and his hunting activities. The order was granted and remains in force.

What followed the restraining order against the second respondent is a sad state of affairs which this court must frown at. It is disturbing, unacceptable and of course screams for censorship from this court.

On 15 June 2006 the applicant was arrested on certain criminal allegations. He was literally ejected from the lodge by armed police who up to the time this application for review was made, had remained at the applicant's lodge to ensure that no

tourism or other related operations were carried out. To get an insight into what happened it is important to restate what the applicant's legal practitioners stated in their letter to the first respondent on 20 June 2006. The letter reads in part as follows:

> "…as threatened, the state machinery was unleashed and it descended, heavily on our client and his clients.
>
> On Thursday the 15th of June, our client was arrested. This was the day on which clients from the Chech Republic arrived at camp after a gruelling 20 hours of travel. Within hours of the clients' arrival the police descended, *en masse*, at the camp and ordered that the camp be evacuated within a period of 30 minutes. This was at night. Pleas that the clients vacate the following morning fell on deaf ears.
> Our client was bundled into a police van before he could even make alternative arrangements for his clients' accommodation…"[1]

In the absence of any other information to the contrary, I am inclined to accept that the above is a true reflection of how the applicant was

evicted from Jijima Lodge. The applicant's clients from Chech Republic are tourists who had come to this country.

According to the applicant his unlawful eviction was a follow up to threats of forced eviction uttered to him by the second respondent. There was no court order for the eviction of the applicant. It is inconceivable that the police would have *mero moto* initiated the ejectment of the applicant and his clients without a

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1 Paragraphs 12-14 of letter of 20th June 2006 from Majoko and Majoko Legal Practitioners addressed to first respondent

proper court order. Even if there was such a court order, the police would only have come to the aid of either the Deputy Sheriff or the Messenger of Court but only by invitation.

In my view whoever instructed the police to act in the manner they did was not only abusing his office but was clearly abusing the Office of the Ministry of Home Affairs. That abuse must be condemned in the strongest possible terms. In a civilised or aspiring democracy, the police must be there for both the weak and the strong. If those in positions of trust are allowed to use the police in the manner they did in this case, we must all be concerned. It is an unconscious attempt to take the country back to the dark ages where the survival of the strongest reigned supreme. It is unacceptable.

On 20 June 2006, the applicant was served with a letter from the first respondent advising him that the offer of land made to him on 13 July 2002 had been withdrawn with immediate effect and that he should cease all operations on the land and vacate same immediately. The letter invited the
applicant to make representations to the first respondent within 7 days. This was not before but after his eviction.

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It is imperative that I refer in elaborate detail to the letter written by the first respondent to the applicant. The most relevant parts of that letter reads as follows:

"TO: L Masunda Date 7 June 2006

RE: WITHDRAWAL OF LAND OFFER UNDER THE LAND REFORM AND RESETTLEMENT PROGRAMME (MODEL A2, PHASE II)

Please be advised that the Minister of State for National Security, Lands, Land Reform and Resettlement in the President's Office is withdrawing the offer of land made to you in respect of subdivision 1 of Volunteer 47,48, 49 Farm in the Hwange District of Matabeleland North. The withdrawal is in terms of the condition of offer attached to the Offer Letter to you of …

You are therefore notified of the immediate withdrawal of the offer of subdivision 1 of Volunteer 47, 48, 49 measuring 611.79 hectares. You are required forthwith to cease all or any operations that you may have commenced thereon and immediately vacate the said piece of land.

If you wish to make any representation on this issue please do so in writing within 7 days of receipt of this notification and please direct your correspondence to the Minister.

(Signed)
Hon. D.N.E. Mutasa (MP)
Minister of State for National Security, Land, Land Reform and Resettlement in the President's Office"

Aggrieved by the actions of both the respondents the applicant sought to have their actions reviewed.

The second respondent has been sucked in this review because the applicant genuinely believes that it is the second respondent who has

largely influenced the actions of the first respondent to evict him from the allocated land. I have gone out of my way in detailing the conflict between

the second respondent and the applicant. I am satisfied beyond doubt that it is that conflict which prompted the eviction of the applicant from the allocated land by the first respondent. The applicant's decision to bring in
the second respondent within the armpit of these review proceedings was a well informed position.

I will now shift my focus on the actions of the first respondent.

Was it competent for the first respondent to withdraw the land offer in the manner he did?

In my view the answer must be in the negative for basically two reasons.

The very basic requisite of a contract is that there must be an offer and acceptance. G H Teitel, succinctly sums up the legal position in the following:

> "An offer is an expression of willingness to contract on certain terms made with the intention (actual or apparent) that it shall become binding as soon as it is accepted by the person to whom it is addressed."[2]

By its letter of 13 July 2002, the Ministry of Lands, Agriculture and Rural Resettlement extended an offer of land to the applicant. Paragraph four of that offer letter invited the applicant to indicate in a prescribed manner whether or not he accepted the offer. The applicant states in his
unchallenged founding affidavit that he together with his colleagues fully complied with the requirements of the offer letter and accepted

2 *The law of Contract* by G H Teitel, fourth edition published by London Stevens and Sons, 1975, at p 7

the offer

made by doing what they were required to do. This has not been challenged. The court is obliged to religiously accept the position as stated by the applicant.

Once the applicant accepted the offer within the stipulated time and in the prescribed manner, there was no more offer to talk about. What resulted was a clear contractual agreement between the Ministry of Lands, Agriculture and Rural Resettlement and the applicant. To talk of withdrawal of land "offer" which offer had transmogrified itself into something else is clearly a misconception of what transpired. That position is not borne out by what the two contracting parties did and the first respondent's position is therefore not sustainable.

Secondly, it is a very basic administrative procedure that before one takes a decision that adversely affects the other, the affected individual must be given an opportunity to be heard. As correctly argued by the applicant, this is a very basic tenet of the rules of natural justice.

In administrative law this concept is referred to as the *audi alteram partem* rule. It is part of our law. One of the most respected legal writers in Zimbabwe G Feltoe states:

> "Literally translated *audi alteram partem* means "hear the other party". It is an elementary notion of fairness and justice that a decision should not be made against a person without

> allowing the person concerned to give his side of the story. Put in the context of administrative decision making, the *audi* principle requires that a decision affecting a person's rights or his legitimate expectations of
> receiving a benefit, advantage or privilege should only be made after hearing first from that person and taking into account what he
> or she has said. If the decision-maker is holding prejudicial

> information against the person concerned that prejudicial information must be disclosed to the person and he or she must be given a chance to refute that information."[3]

Clearly, the first respondent, in sympathy with the second respondent took drastic action against the applicant in clear violation of the *audi alteram partem* rule. The applicant was neither afforded an opportunity to make representations nor told the reasons why that decision against him was taken before it was made.

To invite the applicant to make representations on his eviction after his eviction was merely to put the cart before the horse. It was incompetent for the first respondent to do so. I want to believe that the first respondent inadvertently acted in the manner he did.

I am well acquainted with the provisions of the Agricultural Land Settlement Act Chapter 20:01 – the Act which regulates the allocation of land in this country. That Act does not give the Minister of Lands, Agriculture and Rural Resettlement or the Minister of State for National Security, Lands, Land Reform and

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3 *A Guide to Administrative Law* (Third edition, 1998) by G Feltoe, published by the Legal Resources Foundation at p 30.

Resettlement in the President's Office unilateral powers to withdraw "land offers" to beneficiaries of the land reform programme.

If it were so it would make almost every citizen of this country who benefited from the land reform programme vulnerable.

It would mean for example, that such beneficiaries (the two respondents inclusive) would wake up one day to find they have been evicted from their respective pieces of land in complete violation of the *audi alteram partem* rule.

This chaotic situation could not have been the intention of the legislature when it enacted the Agricultural Land Settlement Act Chapter 20:01.

It was for these reasons that I felt strongly inclined to make the order of 7 July 2006.

Majoko and Majoko Legal Practitoners, applicant's legal practitioners
No appearance for the respondents