

BERNARD DUMBURA
versus
CHIEF LANDS OFFICER (MASH CENTRAL) (NO)
and
GEORGE MANYAME

HIGH COURT OF ZIMBABWE
NDEWERE J
HARARE, 30 December 2014 and 4 March, 2015

Urgent chamber application

I Ndudzo, for the applicant
J Mumbengegwi, for the 1st respondent
G. Gumbo, for the 2nd respondent

NDEWERE J: The applicant was issued with an offer letter, Annexure A on 7 October, 2004 for Subdivision 2 of Pimento Farm in Bindura District measuring 46 hectares.

On 28 November, 2014, the applicant received a note from the Provincial Chief Lands Officer advising him of a re-planning of the land carried out in 2007 which resulted in his offer being withdrawn on 17 June, 2013 by a withdrawal letter signed by the then Minister of Lands and Rural Resettlement. The withdrawal letter of 17 June, 2013 was attached to the note by the Provincial Chief Lands Officer.

The applicant is challenging the withdrawal of the offer through a court application HC 10653/14 which is still pending. On 2 December, 2014, the applicant then filed the current urgent application seeking an interdict against the first and second respondent to stop interfering with his rights on the disputed land pending the determination of his court application in HC 10653/14. Both respondents opposed the application.

The first respondent raised a point *in limine* that the Minister of Lands and Rural Resettlement is the one who should have been cited as the first respondent and not the Chief lands Officer. The first respondent further said since the applicant's offer was withdrawn, he has no *locus standi* to institute proceedings in connection with Plot 2 Pimento Farm. Thirdly, the first respondent said the matter was not urgent because the note which the applicant received from the Chief Lands Officer on 28 November, 2014 advised him to approach the

Minister of Lands within seven days with any representations. The first respondent said instead of approaching the High Court four days after receiving notification from the Chief Lands Officer on behalf of the Minister, he should have approached the Minister of Lands and Rural Resettlement with his representations within the seven days communicated to him.

The first respondent submitted that the applicant should not have approached the court before exhausting the domestic remedies available to him as an occupier of State land. The first respondent said the urgency is therefore self-created by applicant's failure to make representations to the Minister of Lands and Rural Resettlement as advised; which was an alternative remedy available to the applicant.

The second respondent submitted that the application was not urgent and that the applicant no longer had any rights to enforce because he had abandoned the farm and thereafter there was re-planning of the farm which led to new boundaries for the land and new offer letters to the occupiers.

In my view, the applicant has *locus standi* to institute any proceedings concerning the piece of land which was withdrawn from him. Section 68 of the Constitution of Zimbabwe referred to by the applicant addresses this point. So does s 4 of the Administrative Justice Act [*Chapter 10:28*] which provides as follows:

“Subject to this Act or any other law, any person who is aggrieved by the failure of an administrative authority to comply with s 3 may apply to the High Court for relief.”

So the point *in limine* on *locus standi* is dismissed.

I am however, persuaded by the arguments by the first respondent firstly, that the applicant should have cited the Minister of Lands and Rural Resettlement as the first respondent and not the Chief Lands Officer. It is clear that the Chief Lands Officer, in his communication of 28 November, 2014 which attached the withdrawal letter by the Minister of Lands and Rural Resettlement, was simply acting on behalf of the Minister. No legal justification was given to the court for citing the Chief Lands Officer who has no legal role in matters of offer letters and their withdrawals, instead of the Minister of Lands and Rural Resettlement, who is the Acquiring Authority in terms of the Gazetted Land (Consequential Provisions) Act, [*Chapter 20:28*]. The point *in limine* that the Chief Lands Officer was wrongly cited is therefore upheld.

The first respondent's argument that this application is not urgent is also convincing. On 28 November, 2014, the applicant received a note from the Chief Lands Officer, attaching a withdrawal letter by the Minister of Lands and Rural Resettlement.

The last paragraph to that note of 28 November, 2014 is very relevant. It stated as follows:

“Any representations that seek to contest that decision have to be in writing to the Acquiring Authority who is vested in the Minister of Lands and Rural Resettlement Dr D. Mombeshora within a 7day period.”

In that paragraph, the applicant, if aggrieved, was being given a chance to ventilate his grievances to the Acquiring Authority within seven days. The seven day period shows that the matter was being treated urgently by the Acquiring Authority.

Instead of using that avenue, the applicant decided to ignore it and instead approached the High Court on a urgent basis. In my view, this is self-created urgency in that the applicant deliberately refrained from utilising an alternative remedy available to him of making representations to the Minister of Lands and Rural Resettlement within 7 days.

In addition, the act of issuing offer letters and withdrawing them is an administrative act by the Acquiring Authority. It would be improper for the High Court to get involved in that administrative act before all the remedies provided in accordance with the Administrative Justice Act have been exhausted. In this regard, s 7 of the Administrative Justice Act, [*Chapter 10:28*], referred to by the first respondent's counsel is instructive. It provides as follows:

“Without limitation to its discretion, the High Court may decline to entertain an application made under section 4 if the applicant is entitled to seek relief under any other law, whether by way of appeal or review or otherwise and the High Court considers that any such remedy should first be exhausted”

The invitation to the applicant to make representations to the Minister within 7 days was an invitation to make the Minister review his decision if necessary and applicant ought to have seized that opportunity, instead of mounting an application to this court on an urgent basis.

As correctly pointed out in *Musunga v Utete and Another* HH 90/2003, pages 2 to 3,

“...no litigant is entitled as of right to have his matter heard on an urgent basis-the test provided by the Rules is that the matter must be so urgent and the risk of irreparable damage so great that the matter cannot proceed within the normal time frames provided in the Rules.”

Consequently, this application cannot be dealt with as an urgent matter.

Having ruled that the application is not urgent, I shall not delve into the merits of the matter.

The applicant shall pay the respondents' costs.

Mtamangira & Associates, applicant's legal practitioners
Civil Division of the Attorney-General's Office, 1st respondent's legal practitioners
Gumbo & Associates, 2nd respondent's legal practitioners