

TANDIWE MHLANGA
versus
ZIMBABWE LAND COMMISSION
and
MINISTER OF LANDS, AGRICULTURE & RURAL RESETTLEMENT
and
MUNASHE SHOKO

HIGH COURT OF ZIMBABWE
MAFUSIRE J
MASVINGO, 2 February 2019

Date of written judgment 13 November 2019

Opposed application

Mr *E. Chibudu*, for the applicant
Mr *T. Undenge*, for the first & second respondents
No appearance for the third respondent

MAFUSIRE J

[1] This was an opposed application. The original and main dispute was between the applicant and the third respondent. But in this particular application the applicant sought a remedy against the first and second respondents. I guess the third respondent was cited merely as a nominal respondent being so much of an interested party.

[2] The applicant captioned her application as one in terms of s 4 of the Administrative Justice Act, *Cap 10:28*. She complained that, being administrative bodies and therefore entities governed by that Act, the first and second respondents had failed to adhere to the standards set out in s 3. Briefly these are:

- the right of a person to receive adequate notice of the nature and purpose of any action proposed to be taken by an administrative body;
- the right to a reasonable opportunity to make adequate representations; and

- the right to adequate notice of any right of review or appeal where applicable.

[3] In terms of s 4 of the Act, an aggrieved person has the right to approach the High Court for relief.

[4] The details were these. The applicant was quarrelling with the third respondent over a piece of sugar cane land on which they had been allocated by Government in terms of its land reform programme. The applicant had an offer letter dated 2004 over a piece of land that was plus or minus 50 hectares in extent. The third respondent also had an offer letter issued sometime in 2017 over a piece of land plus or minus 21 hectares in extent.

[5] The applicant claimed the 21 hectares offered to the third respondent had been carved out of her own 50 hectares without due process. She said in September 2017, the third respondent, buoyed by that recent offer letter to him, had tried to force his way onto her land, yet for thirteen years she had been growing sugar cane undisturbed on the entire land, including the 21 hectares allegedly offered to the third respondent unprocedurally.

[6] In September 2017 the applicant brought an urgent chamber application against the third respondent for an interdict to bar him from interfering with her farming operations on the disputed land. I heard it. I never had to decide the matter. The parties agreed to an order by consent. Essentially the agreement was to have the matter referred to the first respondent for determination. The first respondent is the proper forum for such disputes. It is a constitutional body. In terms of s 297 of the Constitution, it is empowered to investigate and determine complaints and disputes regarding, among other things, the allocation of agricultural land.

[7] On 14 September 2017 I issued an order by consent. The operative part said the applicant would harvest the crop of cane on the disputed portion of the land but that thereafter all operations on it would cease pending the resolution of the dispute by the first respondent within thirty days.

[8] The first respondent obliged. In its notice of opposition to the present application the first respondent said it had resolved the dispute in terms of the High Court order and in accordance with its constitutional mandate. It said on the appointed day it had called the parties for a survey of the land boundaries. Using the advanced GPS facility (Global Positioning System), it had established that the 21 hectares allocated to the third respondent had been over and above, and quite separate from the 50 hectares allocated to the applicant. Her 50 hectares were intact. Of those, about 48 were arable. The respondent might have been farming the extra 21 hectares over the years but she had no lawful authority or any right over them.

[9] It was this decision by the first respondent that sparked the present application. The applicant said she was disgruntled by the decision. She claimed her representative had not been given an opportunity to make representations. She claimed the decision was unfair, unprocedural, illegal and irrational. In this regard she merely regurgitated the language of *Secretary for Transport & Anor v Makwavarara* 1991 (1) ZLR 18 (SC).

[10] The applicant sought the following orders:

- that the resolution made by the first respondent on the dispute between the applicant and the third respondent be set aside;
- that the offer of 21 hectares by the second respondent to the third respondent over the applicant's plot be cancelled;
- that the applicant should continue to tend to her sugar cane crop on the 21 hectares pending finalisation of the dispute;
- that the first and second respondents had to invite the applicant and the third respondent to submit representations in respect of the disputed land within thirty days of the court order; and

- that the second respondent should make a determination into the matter giving written reasons within ninety days of the date of the court order.

[11] The application was manifestly ill-conceived. I dismissed it soon after the presentation of oral submissions and gave my reasons *ex tempore*. That was on 2 February 2019. The record was returned to the Registry. Only in August 2019 did the Registry receive a letter from the applicant's lawyers wanting written reasons for my decision and claiming that a previous request had by mistake not been delivered. But regrettably, I could not oblige soon enough. For much of the second term vacation and the third term I was indisposed. That explains the delay in rendering this judgment,

[12] The application was ill-conceived, because apart from regurgitating the principles of review of an administrative decision as set out by case law, there was little or nothing of the factual background upon which the application was based.

[13] Both the first and third respondent stated in their opposing affidavits that all the parties were called to witness the GPS survey. The applicant was completely silent about this crucial fact, both in her founding and answering affidavits. So, I find that the applicant was present when the GPS survey was conducted. She would have had the opportunity to make whatever representations she might have had.

[14] The first respondent said the results of the GPS survey showed that the applicant's 50 hectares were not interfered with and that the 21 hectares allocated to the third respondent were not carved out of her portion. The applicant proffered no counter argument, let alone present any facts to rebut the survey findings. She was simply adamant that the 21 hectares allocated to the third respondent had been chopped off her own allocation. That was ill-conceived.

[15] Part of the applicant's argument was that the first respondent wrongly treated the dispute between herself and the third respondent as a dispute over boundaries, yet it was not, but was a dispute of land invasion by the third respondent over land lawfully

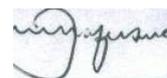
allocated and utilised by herself. But the dispute was indeed a dispute over boundaries. The order by consent in September 2017 expressly recognised the dispute as one over boundaries. The very first line to the preamble to that order read:

“Whereas there is a dispute relating to boundaries and allocation of land on Farm 38, Hippo Valley Estates, Chiredzi as between and among the parties;”

[16] There was no basis for the remedies sought in the draft order. The real dispute had been competently and properly resolved by the first respondent. That the applicant had farmed on the disputed portion of the land for thirteen years did not preclude the second respondent from properly allocating it to deserving beneficiaries as the applicant had not acquired rights over it. When the first respondent resolved the dispute, it issued out a written determination. No breach of the Administrative Justice Act was shown to have occurred.

[17] It was for the above reasons that I dismissed the application with costs.

13 November 2019



Kwirira & Magwaliba, applicant's legal practitioners
Civil Division of the Attorney-General's Office, legal practitioners for the first & second respondents