

DANGER MUZHANGE
versus
MINISTER OF LANDS & RURAL RESETTLEMENT
and
CEOFILAS KANYENZE

HIGH COURT OF ZIMBABWE
TAGUJ
HARARE 20 & 29 July 2015

Opposed Application

C.T. Mathaba , for the applicant
S. Chihuri , for the 1st respondent
T.P.M. Mateisaniwa , for the 2nd respondent

TAGUJ: This is an application for a declaratory order invalidating a withdrawal of an offer letter made by the first respondent on the fourth of September 2014. The applicant in this matter applied for land allocation after the launch of the Land Reform Programme. He was allocated Plot 1, Makumbi Farm in Mazoe District in 2007. The plot measures 6 hectares in extent. At the time of allocation the applicant was not issued with an offer letter as confirmation. The applicant was only issued with the certificate of occupation in 2010. Unbeknown to the applicant the same piece of land had previously been allocated to the second respondent in the year 2000. The second respondent's allocation was confirmed by an offer letter dated 1 September 2004. In 2006 the second respondent's wife suffered a stroke and the second respondent also developed mental problems. The two then relocated to an urban dwelling in Mvurwi for purposes of seeking treatment.

In his opposing affidavit the second respondent said that they then left his young brother at the plot. When they recovered from their illnesses in 2007 they returned to the plot only to find the applicant now occupying their plot. Their offer letter had not been revoked by the first respondent. This made the first respondent after hearing submissions, to withdraw the offer letter it had subsequently given to the applicant on 4 September 2014. However, the applicant in his founding affidavit disputed the fact that the second respondent left his young

brother on the plot because there was no evidence to that effect.

In his heads of argument the applicant submitted through his defence counsel *Mathaba* that the withdrawal of the offer letter was done without affording the applicant a chance to be heard, and as such it offended the provisions of the Constitution of Zimbabwe, the Administrative Justice Act and by and large the *audi alteram partem* principle. It was further submitted that the letter of withdrawal purported to invite the applicant to make representations to the administrative authority, but the invitation was clearly cosmetic and decorative, and of no effect, because the withdrawal had already been done without the applicant being consulted or notified. It was argued that though the applicant proceeded to make representations, the representations were not acted upon.

The notice of withdrawal complained of read in part as follows:

“RE: WITHDRAWAL OF LAND OFFER WITH THE LAND REFORM AND RESETTLEMENT PROGRAMME (MODEL A1, PHASE II): MAZOE DISTRICT

Please be advised that Mazowe District Committee is withdrawing the offer of land made to you in respect of plot 01 of MAKUMBIRI farm in Mazowe District of Mashonaland Central Province. The withdrawal is in terms of conditions of certificate of the A1 settlement.

You are therefore notified of the immediate withdrawal of the offer of plot 01 of MAKUMBIRI measuring 6 hectares. You are required furthermore 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 representations on this issue please do so in writing within 7 days of receipt of this notification. Please direct your correspondence to the Chairperson of the lands committee.

District Administrator.....(S Nyakudya)

District Lands Officer.....(R Harinangoni)”

The applicant’s counsel conceded that the applicant proceeded to make recommendations, but these were ignored. Her argument was that because the withdrawal had been decided before hearing the submissions, it was illegal.

The counsel for the first respondent *Chihuri* opposed the application and stated that the withdrawal was not done arbitrarily or without following the principles of natural justice at all. She said in terms of the withdrawal letter the applicant was informed that he could lodge his representations to the Chairperson of the Lands Committee. The noting of the representations allowed a member’s side of the story to be heard. She further submitted that

the applicant was given a chance to make his representations hence the principles of natural justice were followed. In any case, when the applicant made his representations the first respondent considered them but still arrived at the same decision. Hence the withdrawal of the applicant's offer letter was done after the first respondent had noted that the applicant was allocated the piece of land that belonged to the second respondent.

However, *Mateisaniwa* counsel for the second respondent submitted that in terms of s 68 of the Constitution of Zimbabwe Amendment (No. 20), Act 2013, the first respondent should have given the applicant the right of audience before withdrawing the offer letter. The court was referred to the most recent case of *Cleophas Paridzira v Ministry of Lands and Anor* HH 376/ 15 where Justice Zhou had this to say:

“Procedural fairness entails that the opportunity to make representations be afforded to a person adversely affected by administrative conduct.....(Section 3(2) (a) and (b) of the Administrative Justice Act (requires) an administrative authority making decision which is adverse to the right, interest and legitimate expectation of a person to give adequate notice of the nature and purpose of the proposed action and a reasonable opportunity to the affected person to make adequate representations...”

The sentiments by the learned Judge, in my view are correct. However, what is peculiar about this case is that contrary to the applicant's averments that the second respondent's offer letter was withdrawn, the said offer letter was never withdrawn. No formal communication whether written or oral was made to the second respondent that his offer letter had been withdrawn. This fact was confirmed by the counsel for the first respondent. In terms of the law the second respondent remained a legitimate holder of an offer letter given to him earlier in the year 2004 before the applicant occupied the plot in question. In the case of *Chirinda v VanDe Merwe & Anor* HH 51/13 the court held that:

“The holder of an offer letter, permit or land settlement lease has a clear right, derived from an Act of Parliament, to take occupation of acquired land allocated to him or her in terms of the offer letter, permit or land settlement lease”

In *casu*, this was a case of double allocation. In my view, the offer letter given to the applicant was not procedurally made. It was null and void *ab initio* because the first offer letter given to the second respondent had not been procedurally withdrawn. In the case of *Sigudu v Minister of Lands & Anor* HH 11/13 the court expressed the following sentiments:

“.....the power to withdraw or cancel an offer of land must be exercised lawfully and procedurally, and this quite obviously necessitates the giving of due notice to the holder of the offer letter...”

So the second respondent being a lawful holder of an offer letter remained in possession of a clear right which allowed him to continue in occupation of the land. The second respondent had made a blunder by offering the same plot to the applicant without cancelling the first offer letter it had given to the second respondent. Naturally the first respondent was obliged to cancel the offer letter it erroneously gave to the applicant. I was not persuaded that the principles of *audi alteram partem* rule were not followed, given the fact that the notice called upon the applicant to make representations which he did and the first respondent came to the same conclusion that the offer letter given to him had to be withdrawn.

In the result I make the following order:

It is ordered that the application is dismissed.

Zvinavakobvu Law Chambers, applicant's legal practitioners

Civil Division of the Attorney General's Office, 1st respondent's legal practitioners

Legal Aid Directorate, 2nd respondent's legal practitioners