TASARA MUGUTI
and
OTTILIA KUDZAI MUGUTI
versus
MINISTER OF LANDS, AGRICULTURE, FISHERIES, WATER AND RURAL DEVELOPMENT
and
THE ATTORNEY GENERAL

HIGH COURT OF ZIMBABWE
TAKUVA J
HARARE; 20 January & 27 May 2025

Court Application for Review

F Nyamayaro, for the applicant
L. T Muradzikwa, for the 1st and 2nd respondents

TAKUVA J: This is a court application for review with applicant seeking the following order;

1. The decision of the first respondent to cancel the applicants' 99-year lease be and is hereby set aside.
2. The first respondent to pay costs of suit.

BACKGROUND FACTS

The parties in this matter share a long-standing history which after a while however, turned sour. The parties entered into a 99-year lease agreement with the first respondent in 2012 in respect of Dunnine Estate farm. This followed after the applicants had received an offer letter for Dunnine Farm in 2003. The lease was registered in 2015. Thereafter. it seems the parties encountered a hurdle as the first responded withdrew its land offer in 2016 and also moved to cancel the applicant's lease. This was however challenged successfully by the applicants who were then granted an order in their favour under HC 9908/17 with the Minister's decision being set aside.

To add on, the peace between the parties was short-lived. In 2023 the first respondent proceeded to issue another letter of intention to cancel the applicant's lease for the 2nd time.

The applicants claim that the reasons stated therein are the exact same reasons that the first respondent had used in the first dispute.

Contrary to the applicants' view, the first respondent claims that the basis for the withdrawal is the applicant's breach of terms of the lease. First respondent alleges that the applicants are in rent arrears and they have also failed to utilise the land offered to them to its capacity.

POINTS IN LIMINE

Both counsels raised points *in limine* in this matter. To this the court will apply the reasoning followed in the case of Telecel *Zimbabwe (Pvt) Ltd* v *POTRAZ & Ors* HH 446/15 wherein MATHONSI J, as he then was stated that:

> "Legal practitioners should be reminded that it is an exercise in futility to raise points *in limine* simply as a matter of fashion. A preliminary point should only be taken where firstly it is meritable and secondly it is likely to dispose of the matter. The time has come to discourage such waste of court time by the making of endless points *in limine* by litigants afraid of the merits of the matter or legal practitioners who have no confidence in their client's defence *viz-a-viz* the substance of the dispute, in the hope that by chance the court may find in their favour. If an opposition has no merit it should not be made at all. As points *in limine* are usually raised on points of law and procedure, they are the product of the ingenuity of legal practitioners. In future, it may be necessary to rein in the legal practitioners who abuse the court in that way, by ordering them to pay costs *de bonis propiis*."

It is my considered view that in this matter the legal practitioners decided to dwell and bump heads over points *in limine* that are not dispositive of the matter. This kind of approach slows down the swiftness of proceedings; proceedings which both parties clearly wish to have finalized. This court shall therefore proceed to deal with this matter on its merits.

ANALYSIS

It is a well-established legal doctrine that a matter stands or falls on its founding affidavit. Despite the respondent challenging this application by claiming that the applicants failed to state their grounds, these are clearly stated in their founding affidavit. The grounds the applicants wish to support the review are as follows;

1. *Res Judicata*
2. Failure to provide adequate reasons for cancellation
3. Irrationality
4. Malice and Corruption

These points are clearly stated in the applicant's founding affidavit under "reasons for review" thus encompassing the grounds without dwelling too much into semantics.

Firstly, the applicants in their founding affidavits claim that the first respondent is using the same reason it used in the first withdrawal to motivate this current one. The requirements for *res judicata* can be summarised as follows;

1. The prior decision must be a final judgment
2. The parties in both the first and second actions must be the same or legally closely related
3. The later suit must involve the same claim or cause of action as the first

The first respondent in its notice of opposition admitted to the applicant's claim that the same reasons as before are being used to withdraw the offer and cancel the contract. The order setting the decision of the Minister aside was given after considering the circumstances during that specific year. First respondent is correct in its submission that this cancellation and withdrawal is only coming after that period. Meaning that the reasons might be the same but they are relating to different periods which in my view does not constitute *res judicata.* This ground ought to fail.

Secondly, the applicants allege that the first respondent failed to provide the adequate reasons why the lease was getting cancelled. As first respondent rightfully states the case of *Taylor* v *Minister of Education and Another* 1996 (2) ZLR 772 (S) at 780 A-B wherein it was stated;

> "The maxim audi alteram partem expresses a flexible tenet of natural justice that has resounded through the ages. One is reminded that even God sought and heard Adam's defence before banishing him from the Garden of Eden. Yet the proper limits of the principle are not precisely defined. In traditional formulation it prescribes that when a statute empowers a public official or body to give a decision which prejudicially affects a person in his liberty or property or existing rights, he or she has a right to be heard in the ordinary course before the decision is taken."

The applicants ought to be heard.

The first respondent in its letter of 3 January 2023 of notice to cancel, it noted 3 reasons being the applicants breach of terms by using the land for something else other than agricultural and pastoral purposes. The second one is that the applicants had permitted the agricultural and pastoral operation to decline and the last one being rental arrears. The applicants followed this up with a letter seeking clarity as to where these allegations where stemming from. All 3 of the reasons noted by the first respondent were challenged. In this matter, it is the court's view that clarity was not afforded. It is unfair to expect applicants to answer to allegations not clearly presented and thereafter using the lack thereof to cancel the applicants' lease. This is not in

accordance with the Administrative Justice Act [*Chapter 10:28*] and the very authority that the1st respondent cited noted above. Section 4 of the act makes it clear that the applicants have the right to request for reasons and the first respondent in this case had the duty to clarify its position before making a decision. This requirement has not been satisfied in this case. First respondent failed to present the very reports it was basing its withdrawal on to the applicants. First respondent cannot make claims, fail to prove these claims then proceed to act on the same claims in its favour. This raises eyebrows as to whether proper procedure was followed or not. The applicants' concerns are therefore valid.

Further, the applicants raised the ground of irrationality. Applicants during the period which the first respondent claims that there was pastoral decline on this farm, applicants were amassing awards. In order for one to ascertain whether this farm was being utilised properly, the first respondent ought to have specifically defined even through numbers what a farm like this is expected to produce and then compare it to the applicant's numbers. Merely stating that there is decline will not suffice as a reason for cancellation.

Lastly, the applicants raise the issue of malice and corruption. These are allegations in my view can be doused by granting this review. The very nature of a review is to examine the legality, reasonableness, and procedural fairness of an administrative decision or action. In this case it has already been established that there is a certain level of procedural irregularity and unfairness that took place therefore the ground is valid in the court's view.

DISPOSITION

The review be and is hereby granted.

IT IS ORDERED THAT:

1. The decision of the first respondent to cancel the applicants' 99-year lease be and is hereby set aside.
2. The first respondent to pay costs of suit.

TAKUVA J: ……..

Farai Nyamayaro Law Chambers, applicants' legal practitioners
Civil Division of The Attorney General, respondents legal practitioners