

MAANHU MARANGE
vs
THE PERMANENT SECRETARY FOR LOCAL GOVERNMENT AND PUBLIC WORKS
N.O
and
EDWARD MARANGE
and
MINISTRY OF LOCAL GOVERNMENT PUBLIC WORKS AND NATIONAL HOUSING
N.O
and
THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE N.O

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 3 March 2022

Opposed Application

V Chinzamba, for the applicant
Advocate Chimwawadzimba with Mr Madondo, for the second respondent
No appearance for first, third and fourth respondents

MUZENDA J: This is a court application for review in terms of ss 26-28 of the High Court Act, [Chapter 7:06] as read with s 4 of the Administrative Justice Act, [Chapter 10:28] where applicant seeks the following relief in terms of the draft order.

“IT IS HEREBY ORDERED THAT

- 1. The decision of the first respondent to remove applicant from the office of village head be and is hereby set aside on the ground of gross irregularity and is substituted with the following:***
 - (a) ‘The appointment of the second respondent as substantive village head by the first respondent be and is hereby set aside.’***
- 2. The dispute of the removal of the applicant from the position of village head is hereby submitted or remitted to the third respondent who is hereby directed:***
 - (a) to convene a meeting of the Provincial Assembly of Chiefs responsible for the Marange area, within the 2 calendar months, to make recommendations on the resolution of the dispute, in casu and,***
 - (b) to submit the recommendations of the Provincial Assembly of Chiefs to the fourth respondent to enable him to resolve the dispute in accordance with s 283 of the Constitution of Zimbabwe.***
- 3. Pending the resolution of the dispute, the applicant shall perform the function of an acting village head as provided in the Traditional Leaders Act [Chapter 29:17].***

4. Third respondent shall pay costs of suit on attorney client scale”

Only second respondent opposes the application.

Background

Applicant acted as village head in 2006. He was made substantive in 2009. In 2011 applicant was suspended pending alleged misconduct. On 13 June 2012 applicant was reinstated to his position as village head without loss of benefits. After that 2012 reinstatement no documents pertaining to his misconduct as village head was served on him. On 9 September 2021 applicant received a letter from the District Development Coordinator addressed to Chief Marange advising the chief about the removal of applicant as village head and his replacement with second respondent Edward Marange. The letter does not state the reasons for applicant’s removal, whether it was a result of a misconduct charge or disqualification. The circumstances of his removal were not disclosed to the applicant. Aggrieved by this development applicant filed the application for review stating that he was not afforded an opportunity to be heard, no hearing was conducted preceding his removal. Applicant added that the first respondent had no right to remove applicant from office of village head. He goes on further to state that second respondent was not nominated by the headman of the area to be village head nor was the headman ever consulted for second respondent’s appointment and elevation. Applicant further avers that first respondent did not involve the assembly of chiefs nor did he involve them in the process. He prays that his removal from office be set aside and that he be reinstated.

The second respondent opposes the application. He contends in his opposing affidavit that the appointment of applicant as substantive village head long back in 2009 was undue and unprocedural. Applicant delved into the lineage and family tree of the Maanhu clan and outlines who was to be appointed after the death of an incumbent village head. He also pointed out alleged acts of misconduct of applicant as well as insubordination to the chief. He denigrates headman Chikuku for having no capacity to recommend applicant because the latter was no longer a substantive headman. To second respondent applicant was aware of the then ongoing investigations long back in 2012 and asks the logic of applicant in alluding to chiefs council and citing the involvement of the fourth respondent. Second respondent’s view is that the appropriate Act to deal with this matter is the Traditional Leaders Act than resorting to the Constitution. He prayed for the dismissal of the application for review with costs.

Parties' Submissions

In his heads of argument applicant in principle submitted that before removal from his position he was not charged nor found guilty of a misconduct or a criminal charge. No disciplinary hearing was instituted so as for the first respondent to invoke s 13 of the Traditional Leaders Act [*Chapter 29:17*] for the removal of a village head. That procedural etiquette could have provided applicant an opportunity to be heard. Applicant cited s 68 (2) of Constitution dealing with the right to be given reasons for a consequence affecting that individuals interest or legitimate expectation. In applicant's view he had a right to be heard before a decision was made to remove him.

Applicant further added that first respondent lacked the powers to remove applicant from power. First respondent can only remove a village head in terms of s 13 of the Traditional Leaders Act that is where the village head has been convicted or found guilty of a misconduct and that will be in the public interest to so remove a village head. None of all these instances occurred in this case, hence applicant avers that first respondent's decision is unlawful and unenforceable.

The third ground of review advanced by the applicant was the manner second respondent was subsequently appointed. Applicant contends that first respondent did not follow s 11 of the act. First respondent should have involved the headman of the area, but he did not. It is the duty of the headman to nominate a person and in consultation with the chief recommend that person to first respondent for the appointment. The fourth ground of review advanced by applicant deals with the failure of first respondent to involve the Provincial Chiefs' Council of Manicaland to resolve the issue of village headship. To the applicant the issue of discipline by a village head involves Traditional leadership and the Chief's Council and the President of the Republic should be involved and failure to involve them shows that the first respondent acted irregularly, warranting this court to review first respondent's decision.

To the contrary second respondent contends that no review accrues to the applicant. He submits that applicant's views on the law and facts are wrong. To second respondent applicant has always been aware of the allegations levelled against him, particularly those of being insubordinate to the then Acting Chief Marange. Applicant was equally aware of the investigations which were being carried out. In addition it is the contention of the second respondent that applicant's ascension to the village headship was unprocedural and outside customs and traditions of the Marange Community and first respondent did right to remove

applicant and appoint second respondent. Second respondent goes on to cite a chain of case law authorities to support the powers of an administrative body and the correctness of first respondent's decision particularly the provisions of ss 12 and 13 of the Traditional Leaders Act [*Chapter 29:17*]. Second respondent's prayer is to have applicant's application for review be dismissed.

Issues for determination

As pointed out herein applicant spelt out four grounds for review. However, grounds 3 and 4 are completely in my view irrelevant to the matter before me. I am persuaded by the second respondent's interpretation of s 283 of the Constitution of Zimbabwe which specifically caters for matters dealing with the appointment, suspension, succession and removal of chiefs than village heads. One cannot expect the President to deal with such matters which involves village heads, it is the domain of the first respondent upon the nomination of such a person by a headman and approval by the chief, then the first respondent writes a letter of appointment of the village head. The Provincial chief's council advises the President on the issues of chieftainship. In my view grounds 3 and 4 advanced by applicant to motivate his application have no basis and are dismissed.

What however features prominently from applicant's application are two issues for determination.

1. *Whether there should have been an enquiry before applicant was removed from his position as village head.*
2. *Whether the first respondent was duty bound to charge applicant with a misconduct, hear him first before finding him guilty of a misconduct leading to applicant's dismissal?*

These two are the fundamentals for decision.

First and third respondents chose not to oppose the application. No indication was filed to show their attitude about the application. The decision that is sought to be reviewed by this court is the first respondent's not the second respondent's. Second respondent was cited completely out of abundance of caution as the incumbent village head. Second respondent did not charge applicant nor did he remove him from office. The best second respondent could have done was to complain to first respondent about the ascension or appointment of applicant. Second respondent in my view had no business in opposing the application for review for he

does not know why first respondent acted in the way he did. To say the least this application should have been treated as unopposed.

First respondent did not attach or file any documents to show that applicant was properly charged with a misconduct. There is nothing to show the court the response of applicant to those charges. Nothing was placed before the court, the nature of the grievance or complaint by first respondent. Whether or not any inquiry was done and if so by whom, what is clearly available is a determination by first respondent dismissing applicant. It is apparent that that determination is very unsatisfactory. Was applicant found guilty of any charge, if so what charge? What were the specific allegations applicant was found guilty of? Were the allegations established and by whom? Was there a forum finding of a misconduct warranting applicant's removal?

The papers placed before the court do not provide any answer to all these questions. Second respondent found an opportunity to air his grievance against applicant but what is before the court is to find out why applicant was removed from his position of village head not how he was appointed. That duty to explain squarely falls on the first respondent, by not opposing the application he is conceding to his mistakes and irregular course of removing applicant.

After hearing counsel for the second applicant conceded that the manner first respondent removed applicant was grossly irregular and the court granted parties to reach a settlement and by consent the following order was granted.

- “1. The decision of the first respondent to remove applicant from the office of village head be and is hereby set aside.*
- 2. There will be no order as to costs.”*

Mugadza Chinzamba and Partners, applicant's legal practitioners.
Makore and Company, for second respondent.

