HB 322-17
HC 1457-16
XREF HC 920-15

THABO MASUKU
versus
THE MINISTER OF LANDS AND RURAL RESETTLEMENT
and
DOUGLAS NDLOVU

HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 17 OCTOBER 2017 AND 26 OCTOBER 2017

Opposed Application

R Moyo-Majwabu for the applicant
L Musika for the 1st respondent
Z C Ncube for the 2nd respondent

MATHONSI J: If indeed this application is not for review and is not for a declaratur as counsel for the applicant submitted during arguments, then what exactly is it for? The applicant seeks an order, on the pain of an award of costs on a legal practitioners and client scale against both respondents, directing that a letter written by the first respondent on 27 May 2016 is "unlawful, null and void and of no legal consequence."

The applicant is a new farmer if ever that expression still holds given that most of them like the applicant were allocated such farms more than 17 years ago. He has been in occupation of Plot 14 Richardson A in the Umguza District of Matabeleland North since year 2000 although he was issued an offer letter dated 23 September 2010 in terms of which he claims title to the approximately 100 hectare tract of land. In HC 920/15 he instituted summons action against the present two respondents seeking an order that he be declared the rightful owner of Plot No 14 Richardson Farm and that the present second respondent and all his hangerlings be made to vacate the said farm.

The applicant averred in that action that when the acquiring authority allocated to him Plot 14 Richardson, the second respondent had been allocated Plot 13. Coveting Plot 14 and taking advantage that the applicant had himself not settled at Plot 14, the second respondent

occupied his land because there is a homestead there. That marked the beginning of a feud which has subsisted up to now. As the lawful Plot holder, he craved the grant of an order in his favour aforesaid. Only the second respondent opposed that action which now awaits set down for trial, a pre-trial conference having been held on 24 May 2016 and the matter referred to trial.

What has prompted the applicant to bring this application is that while awaiting set down of HC 920/16 for trial, the first respondent served the feuding parties with a letter dated 27 May 2016 to wit;

> "RE: NOTICE OF INTENTION TO WITHDRAW LAND OFFER UNDER THE LAND REFORM AND RESETTLENENT PROGRAMME (MODEL A2, PHASE II)
>
> Notice is hereby given that the Ministry of Lands and Rural Resettlement intends to withdraw the offer of land made to you in respect of Subdivision 14 measuring 100, 00 ha of Richardson a farm in the District of Umguza District *(sic)* in Matabeleland North Province. The reasons for the withdrawal are as follows:
>
> 1. Correction of subdivision number to s/d 9 and extent to 165.00 ha as per settlement on the ground.
>
> You are invited to make any representations you may have on this matter in writing within 7 days of receipt of this notification. All correspondence in this regard should be directed to the Minister.
>
> Hon. Dr D T Mombeshora (MP) Minister of Lands and Rural Resettlement."

Whatever that letter means is not clear but the Minister wrote a similar letter to the second respondent except that his relates to Subdivision 13 and the correction is of Subdivision number to 13, 14 and 15. Apparently the applicant took up the challenge and responded to the notification by letter dated 5 June 2016 which reads:

> "REF: NOTICE OF INTENTION TO WITHDRAW LAND OFFER
>
> I write in response to a letter dated 27 May 2016 from your office notifying me of a withdrawal of land I was offered in year 2000 (Plot 14 Richardson). I received the letter on the 30th of May 2016. This is on short notice as there were no prior indications or notifications that I no longer qualify to own the land. I therefore kindly ask your office to enlighten me on the reasons for the withdrawal as those stated were not clear to me.
>
> If at all the move to withdraw my land offer has anything to do with Douglas Ndlovu of Plot 13 in the same farm and my neighbour, I wish to air my view as follows:
>
> 1. I am not willing to neither *(sic)* let go of my plot nor move to any other let alone get my offer letter changed or corrected. I wish to stick to my Plot 14.

2. The major reason for the above is that, currently I have 130 cattle, 52 goats, 10 sheep and donkeys.

   I have sold cattle with available proof that can be produced. I have ploughed and due to shortage of equipment, produced enough maize.

3. I built a structure (2 roomed house) at Plot 14.
4. I had problems with Douglas since 2002. I tried to resolve the issue but was not successful (enclosed is correspondence to relevant authority seeking assistance pertaining to the issue.)
5. I am prepared to compensate Douglas for whatever development he did on Plot 14 provided he produces authentic proof and receipts to that effect.
6. Douglas moved from Plot 13 to my Plot 14 where he now claims that he developed. Hereforth I kindly ask your office to investigate thoroughly on this issue before taking the withdrawal move. I also wish to furnish your office with correct information and details pertaining to the issue.
   Looking forward to a favourable response.

   Yours faithfully

   Masuku Thabo"

It is common cause that the first respondent did not respond to that letter and that up to now he has not executed his intention to withdraw any of the offer letters. The applicant has not given him the opportunity to because five days after writing the above letter, he launched this application. It was filed on 10 June 2016.

The applicant stated in his founding affidavit that following the pretrial conference in HC 920/16 at which the matter was referred to trial, his antagonist the second respondent had threatened to request the first respondent to cancel his offer letter for Plot 14. To him the letter from the first respondent only confirmed that he was acting at the instance of the second respondent. It is a withdrawal of his offer letter on meaningless grounds. The first respondent is maliciously trying to pre-empt the decision of this court at the impending trial. It is unlawful because that litigation should be allowed to take its course without interference from the first respondent who is now trying to change the facts on the ground.

The application is opposed by the second respondent only who asserts that the revocation of offer letters is the prerogative of the first respondent as the acquiring authority. He denied threatening to or even influencing the second respondent to withdraw the applicant's offer letter.

As far as the second respondent is concerned no decision has been taken and its therefore premature for the applicant to make this application.

I must mention at this stage that I have not had the benefit of the first respondent's side of the story as to what prompted him to give the notices. This is because the first respondent did not file opposition and is therefore barred. When this matter was initially set down on 12 October 2017 Ms *Hove* of the Attorney General's Office appeared on behalf of the first respondent. She made an application for a postponement of the matter to enable her to regularize their opposition, which application was "violently opposed" by Mr *Majwabu*, those are his exact words.

Notwithstanding that, I indulged the first respondent and postponed the matter to 17 October 2017 to allow Ms *Hove* to either seek an upliftment of the bar or secure the consent of the applicant to file opposition so that the matter could be determined without undue delay. Regrettably Ms *Hove* only filed heads of argument in a matter in which an automatic bar was in place. She did not appear in court to explain herself but Mr *Musika* stood in her stead. He could not be given audience and the heads of argument they filed were summarily rejected.

I have already said that this application appears quite novel indeed not being a review application in terms of Order 33 of this court's rules or one for a declaratur in terms of s14 of the High Court Act [Chapter 7:06]. It being neither of those one would have thought that the applicant would have considered seeking an interdict preventing the Minister from prosecuting his intention until the determination of the dispute in HC 690/15. This is not an application for an interdict and the applicant has not even begun to satisfy the requirements of an interdict.

The first respondent is the authority charged with the responsibility of allocating and re-assigning farmland in this country. When doing so the Minister exercises quasi-judicial authority and power. While it is true that such quasi-judicial authority and power is subject to contestation by the affected party that can only be done in accordance with the law. Where, in the exercise of authority , which is purely administrative in nature, the Minister falls into error or breaches the law, the remedy to take the administrative decision on review to this court in terms of s27 of the High Court Act [Chapter 7:06] where review grounds exist. Sections 3 and 4 of the Administrative Justice Act [Chapter 10:28] also present an aggrieved party with a window of

opportunity where administrative authority has been misused. It is for that reason that one gets disappointed that the applicant has not proceeded in terms of any recognizable procedure, and certainly not by way of review, appeal or indeed by way of s14 of the Act.

It is also significant to note that the applicant grounds his claim on an offer letter which he would like to enforce. That offer letter contains a bold provision which the applicant does not seem to consider at all. It states, in clause 7:

> "The Minister reserves the right to withdraw or change this offer letter if he deems it necessary, or if you are found in breach of any of the set conditions. In the event of a withdrawal or change of this offer, no compensation arising from this offer shall be claimable or payable whatsoever."

In *Chaeruka* v *Minister of Lands and Another* 2014 (1) ZLR 179 (H) at 185 D-E, this court pronounced that by appending their signature to a written contract, the parties to an offer letter accept that their relationship is to be governed by that contract and nothing else. A holder of an offer letter can therefore not seek refuge outside the four corners of the written contract. That contract, the offer letter, gives the Minister unfettered power to withdraw the offer letter.

The letter sought to be impugned expresses the Minister's intention to withdraw or correct the offer letter given to the applicant. Such intention has not been executed but the applicant was invited to contest it. He properly did so and a decision is yet to be taken in that regard. So what we have here is a situation where an administrative body clothed with unfettered jurisdiction to adjudicate over a land dispute is still seized with the matter having received submissions from the applicant, presumably from the second respondent as well. Before making a decision, the applicant then rushed to this court seeking relief. It is called forum shopping and it is unacceptable.

In any event, this court has always taken the view, hallowed by repetition in a number of judgments, that it will be very slow to exercise its inherent jurisdiction where a litigant has not exhausted the domestic remedies available to him or her. A litigant is expected to bid his or her time and exhaust available domestic remedies before making an approach to this court unless good reasons are shown for making an early approach. While it is true that this court has a discretion to interfere with unterminated proceedings of an inferior tribunal, it will not jump to exercise its jurisdiction where the applicant has other remedies available to him which he has

spurned in favour of making an early approach to this court. See *Tutani* v *Minister of Labor and Others* 1987 (2) ZLR 88 (H); *Communications Allied (Svc(s) Workers Union of Zimbabwe* v *Telone (Pvt) Ltd* 2005 (2) ZLR 280 (H) at 287; *Moyo* v *Gwindingwi N.O and Another* 2011 (2) ZLR 368 (H) at 371 E; *Makarudze and Another* v *Bungu and Others* 2015 (1) ZLR 15 (H) at 27 B-C; *Mazungunye* v *The Trial Officer and Another* HB 123-17.

What makes the applicant's situation untenable is that no decision to withdraw or correct his offer letter has been taken. Only an intention was expressed. He must simply wait for that decision thereby exhausting domestic remedies before he can approach this court. I am aware that the applicant is trying to protest his claim in HC 920/15 which is awaiting trial, but the filing of summons without obtaining an interdict against the first respondent cannot possibly oust his jurisdiction to preside over a land dispute. There is therefore no merit in the application.

In the result, the application is hereby dismissed with costs.

James, Moyo-Majwabu and Nyoni, applicant's legal practitioners
Civil Division, Attorney General's Office, 1st respondent's legal practitioners
Ncube and Partners, 2nd respondent's legal practitioners