FELIX PAMBUKANI
versus
MINISTER OF LANDS, AGRICULTURE, WATER, CLIMATE AND RURAL RESETTLEMENT

HIGH COURT OF ZIMBABWE
TAKUVA J
HARARE; 20 June 2024 & 10 March 2025

Court Application For Review

B Mudhau, for the applicant
L T Muradzikwa, for the respondents

TAKUVA J:

This is a court application for review in terms of section 27(1)(c) of the High Court Act [*Chapter 7:06*].

BACKGROUND FACTS

The applicant is a holder of a valid offer letter under the land reform and resettlement programme (Mode/A2 Phase II in respect of subdivision 2 of WAKEFIELD Farm in CHEGUTU MASHONALAND WEST DISTRICT. Since 2009, applicant has been engaged in the process of applying for a 99 year lease. The application was approved after it received all the recommendations from district level up to national level. On 6 May 2022, applicant was handed a letter from Civil Division of the AG's office addressed to the Secretary of Lands requiring applicant to pay for the registration of his 99 year lease with the Deeds Office.

Whilst applicant was awaiting receipt of his 99 year lease MW/CHE/00349, he received a permit issued to him in terms of the Land Commission Act – See Annexure E. Upon enquiring he was informed that this was the respondent's decision. The decision by respondent to issue a permit for model A2 farm to a holder of a valid offer letter who has paid up for the registration of his 99 year lease agreement over a subdivision 2 he has been in occupation for more than a decade is anomalous.

Aggrieved applicant filed this application seeking an order in the following terms;

"1. The issuance of an A2 Model Settlement Permit N0063963547693D630349 by the respondent, On the 7th of July 2022 be and is hereby set aside.

2. For avoidance of doubt, the *status quo ante* prevailing prior to the 7th of July 2022 in respect of Subdivision 2 of WAKEFIELD situated in Chegutu District of Mashonaland West Province remains and accordingly applicant is confirmed the holder of a valid offer letter for Subdivision 2 of WAKEFIELD situated in Chegutu District of Mashonaland West Province.
3. The respondent shall bear the costs of this suit."

The application is opposed by the respondent on the following grounds;

(a) Applicant has cited a non-existent respondent.

(b) Respondent's decision was not grossly irregular as applicant was given an opportunity to make representations before any decision was made.

3. Applicant admitted that he was not fully utilizing the farm.
4. Applicant's offer letter was withdrawn and reasons were given. The notice conforms to the provisions of the Constitution and Administrative Justice Act.
5. The process of a 99 year lease was indeed followed but since the time parties consulted each other. Applicant failed to pay for the registration of the 99 year lease.
6. During the same period, two teams were sent on the ground to do farm inspections which showed that applicant was illegally subletting the farm contrary to section 18 of the Land Commission Act. The 2 teams concluded that the farm was underutilized.
7. The respondent's decision to down size the farm was reasonable. Applicant paid for registration of the 99 years lease after he had received communication that the farm had been downsized. The 99 year lease has not been registered hence there is no legal lease in the name of the applicant.
8. The new A2 Permit (offer letter) was issued in terms of the law after due process was done. The Land Commission Act provides for the issuance of Permits. The Minister reserves the right to withdraw or change the offer.
9. The farm applicant now leases is subdivision 1 of Wakefield, measuring 90.5 hectares. The Ministry has A1 and A2 models which both have permits.
10. The decision was reached after due diligence of the law that is the Land Commission Act, Administrative Justice Act and The Constitution.

ANALYSIS

The term "Wednesbury unreasonableness" refers to one of the common law grounds of judicial review of administrative action as formulated in the case of *Associated Provincial Picture Houses Ltd* v *Wednesbury Corporation* (1948) 1 KB 22. It denotes a reasoning or decision that is so unreasonable that no reasonable person acting reasonably could have made it." MAVANGIRA JA in *University of Zimbabwe* v *Magumbate & Ors* SC 63 – 17.

The function of judicial review is to scrutinize the legality of administrative action, not to secure a decision by a judge in place of an administrator. As a general principle, the courts will not attempt to substitute their own decision for that of the public authority; if an administrative decision is found to be *ultra – vires*, the court will usually set it aside and refer the matter back to the authority for a fresh decision. To do otherwise "would constitute an unwarranted usurpation of the powers entrusted [to the public authority] by the Legislature." Thus it is said that: "The ordinary course is to refer back because the court is slow to assume a discretion which has by statute been entrusted to another tribunal or functionary." In exceptional circumstances this principle will be parted from. The overriding principle is that of fairness."

A court will normally interfere in the sphere of practical administration only if –

(a) the end result is a foregone conclusion and it would be a waste of time to refer the matter back.

(b) where further delay could prejudice the applicant.

(c) where the extent of bias or incompetence is such that it would be unfair to the applicant to order it to submit to the same jurisdiction.

(d) where the court is in as good a position as the administrative body to make the decision.

A lot has been said about this case but my view is that the matter simply involves the correct procedure for revoking an offer letter, 99 year lease, a permit and factors that are considered therein. Also a lot of confusion has resulted from terminology employed and its meaning.

Accordingly it is helpful to begin with a definition of the pertinent terms. The starting point is section 2 of the Land Commission Act [*Chapter 20:29*]. The Act defines the terms as follows;

"Holder" in relation to an offer letter, means the holder of an offer letter who has indicated that he or she has accepted the offer of a farm described in the letter but who is not yet a party to a ninety – nine year lease;

"Lease" means a ninety – nine year lease or lease with a purchase option or other lease of agricultural land, and "lease" shall be construed accordingly;

"Ninety – nine year lease" means a lease of any portion of Gazetted Land, and relating in particular to that category of resettlement land allocated under the A2 MODEL SCHEME described in the Land Reform and Resettlement Programme and Implementation Plan (Phase 2), published in April 2001 (as reissued and "A1 farm" means a farm held under a permit allocated under the Model A1 scheme (villagized and three – tier land use plans with minimum plots of three hectares) described in the Land Reform and Resettlement Programme and Implementation Plan amended from time to time; (Phase 2) published in April 2001 and re-issued and amended from time to time.) "A2 farm" means a farm held under a ninety – nine year lease allocated under the Model A2 scheme the Commercial Farm Settlement Scheme, not exceeding the maximum farm sizes prescribed under Statutory Instrument 419 of 1999 or any other law substituted for the same) described in the Land Reform and Resettlement Programme and Implementation Plan (Phase 2), published in April 2001 (as reissued and amended from time to time); "Offer letter" means a letter issued by the Minister that offers to allocate an A2 farm to the person to whom the letter is addressed. "Permit" means a permit to hold any portion of Gazetted Land and relating in particular to that category of resettlement land allocated under the A1 Model Scheme described in the Land Reform and Resettlement Programme and Implementation Plan (Phase 2) published and April 2001 (as reissued and amended from time to time).

In my view the disputes emanate from the conflating of procedures by the respondent. Unfortunately the product of these processes resulted in a nullity. For example, a holder of an offer letter relating from the definition cannot be offered an A1 farm and issued with a permit (see definition) Further respondent has not produced proof of the withdrawal of applicant's offer letter. It is not clear how the respondent dealt with the question of the application for a 99 year lease. The applicant went through all the mandated stages and his application was "approved". The respondent simply says tongue in cheek "the lease was not granted." Surely there is a duty on the respondent as an administrative body to give reasons why an application that had been approved ended up not being granted. Respondent's argument on this point ends up in the air. Respondent had a duty to follow a fair and unbiased process.

There is apparent illogical and contradictory version on how respondent handled the applicant's case. Respondent alleges that it carried out inspections to assess alleged underutilization of the farm and two reports by separate teams confirmed that. The reports are dated 9 March 2022 and 17 March 2022. The applicant was invited to pay for registration of a 99 year lease on 6 May 2022. He paid on 9 May 2022. If these reports are true then it follows logically that respondent would not have invited applicant to pay for the 99 year lease a month late. This demonstrates that the process was not transparent and the reports are unreliable to say the least.

It is disturbing that respondent decided to issue a permit two (2) months after applicant had paid for the 99 year lease. As it turned out the 99 year application and registration process was never cancelled or considered.

Indeed revocation or cancellation of a 99 year lease under the Zimbabwe Land Commission Act can occur under specific circumstances. See section 2. Highlights include;

1. Identification of breach
2. Notice of Intention to cancel
3. Consideration of Lessee's response
4. Consultation with The Zimbabwe Land Commission
5. Presidential Approval and
6. Issuance of Cancellation Notices

Granted, respondent argued that in casu there is no 99 year lease that was granted. However from the totality of the circumstances of this case, respondent had a duty to at least give an explanation and reasons that were reasonable and fair.

In the circumstances, I am satisfied that there is a gross irregularity in the manner in which respondent issued applicant's permit.

Accordingly it is ordered that;

1. The issuance of an A2 Model Settlement by the respondent on the 7th of July 2022 be and is hereby set aside.
2. For avoidance of doubt the *status quo ante* prevailing prior to the 7th of July 2022 in respect of subdivision 2 of Wakefield situated in Chegutu District of Mashonaland West Province remains and accordingly applicant is confirmed the holder of a valid

offer letter for subdivision 2 of WAKEFIELD situated in Chegutu District of Mashonaland West Province.

3. The respondent shall bear costs of this suit.

TAKUVA J: ……

Mudimu Law Chambers, applicant's legal practitioners
Civil Division Of The Attorny, respondent's legal practitioners