

WONDER MUKWAIRA
versus
MINISTER OF LANDS, AGRICULTURE, FISHERIES, WATER
AND RURAL RESETTLEMENT

HIGH COURT OF ZIMBABWE
MHURI J
HARARE, 8 November 2022 & 28 February 2023

Review Application

Mr *T Shadreck*, for the applicant
Ms *RB Madiro*, for the respondent

MHURI J: By a letter dated 25 June 2013, applicant was offered a piece of land under the Land Reform and Resettlement Programme (Model A2 Phase II) by respondent.

The offer was in respect of Subdivision 3 of Ingleborough in Mazowe District of Mashonaland Central Province and for agricultural purpose. The piece of land (farm) was 253.00 hectares in extent.

By a letter dated 29 June 2021 respondent notified applicant of its intention to withdraw the land offer in respect of the farm.

The letter reads:-

“RE: NOTICE OF INTENTION TO WITHDRAW LAND OFFER PHASE II

Notice is hereby given that the Ministry of Lands, Agriculture, Fisheries, Water and Rural Resettlement intends to withdraw the offer of land made to you in respect of Subdivision 3 of Ingleborough Farm measuring 249.065 HA in the District of Mazowe in Mashonaland Central Province.

The reason/s for the withdrawal is/are as follows:-

1. LAND NEEDED FOR PUBLIC PURPOSE
2. PROVINCE WILL FIND ALTERNATIVE LAND FOR YOU

You are invited to make any representation 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.

Signed.....

Hon Dr A.K. Masuka

Minister of Lands, Agriculture, Fisheries, Water and Rural Resettlement.”

Following the invitation to make any representations in respect of the notice of intention to withdraw the offer of land, by a letter dated 6 September 2021, applicant made representations to the Minister.

By a letter dated 10 March 2022 the Minister withdrew the land offer as per his notice of withdrawal of 29 June 2021.

The letter reads:-

“RE: WITHDRAWAL OF LAND OFFER UNDER THE LAND REFORM AND DEVELOPMENT PROGRAMME (MODEL A2, PHASE II)”

Following the Notice to withdraw your offer letter, please be advised that the Ministeris withdrawing the offer of land made to you in respect of Subdivision 3 measuring 253.00 hectares of Ingleborough Farm in the Mazowe District of Mashonaland Central Province.

You are therefore notified of the immediate withdrawal of the offer of Subdivision 3 of Ingleborough measuring 253.00 hectares.

You are required to wind up all or any operations that you may have commenced thereon and vacate the said piece of land withindays.

Signed.....

Hon Dr A.J. Masuka

Minister of Lands, Agriculture, Fisheries, Water and Rural Development.”

As a result of this letter, applicant through his legal practitioners of record, wrote back to the Minister raising issues about not being furnished with reasons of the withdrawal, not being advised of his right to either appeal or seek review, the Minister’s powers to withdraw offers of land and no offer of compensation.

Resultantly, applicant filed this application for review on 4 (four) grounds which are summarised as follows:-

1. that respondent having been requested to supply written reasons for the withdrawal of offer of land, failed to do so.
2. by withdrawing the offer of land, respondent acted unlawfully as he does not have the powers or jurisdiction to withdraw an offer of land.
3. respondent acted unfairly by failing to give applicant notice of any right of review or appeal.
4. respondent acted unlawfully by not paying or offering any compensation to applicant.

The relief applicant is seeking is to the effect that:-

1. respondent's decision to withdraw the offer of land be set aside.
2. alternatively that if the withdrawal is found to be valid, respondent be ordered to pay compensation as may be agreed or determined by an arbitrator.
3. respondent be compelled to supply written reasons for his withdrawal of offer of land, within ten days of grant of the order upon failure of which it shall be presumed that respondent constituted an improper exercise of powers conferred on him by the Land Commission Act and the withdrawal shall be set aside.

It is noted that before the notice of withdrawal letter of the 29 June 2021, applicant was served with several notices of intention to withdraw the offer of land, cease operations on the farm.

Through a letter dated 9 February 2015 he was informed to cease all farming operations on the farm, the reason being that the Ministry of Defence had found an investor to carry out meaningful operations at the farm. The letter was from the Ministry of Defence.

On 10 September 2015, a notice of intention to withdraw the land offer was issued by the Minister of Lands. The reason for the withdrawal was given as, double allocation as the farm had been issued to the Zimbabwe Defence for security purposes.

In his response to the letter of the 10 September 2015, applicant was not averse to the withdrawal of the land offer. He pleaded with the Minister to extend the notice period to allow him to work on the administration of his current projects, and for the Minister to find him alternative land.

On 28 January 2016 another notice of intention to withdraw the land offer was issued by the Minister. The reason was given as, the farm was acquired and handed over to Local Government.

On October 2017, the Ministry handed over the whole farm 602.700 hectares to Zimbabwe National Defence Forces for institutional agricultural use. By a similarly worded letter dated 11 January 2005 the Minister of Special Affairs in the Office of the President and Cabinet in charge of Lands, Land Reform and Resettlement had handed over the farm to Zimbabwe Defence Forces.

It is clear from the various notices of withdrawal and letters that various reasons were given for the intention to withdraw the land offer. It is his contention that it is not these reasons that he is talking about but the reasons he requested through his letter dated 20 May 2022 after receiving

the letter of withdrawal of the 10 March 2022. Respondent did not furnish him with the reasons as requested.

The application for review is opposed by respondent. It is its position that reasons were availed in the various notices given to applicant and that the main one was that the land was withdrawn for public purposes. It was also its position that respondent being the custodian of all State Land is empowered by s 23 of the Land Commission Act [*Chapter 20:29*] to issue offer letters and in terms of s 26 is empowered to set terms and conditions for leases of Gazetted or State Land to applicants. The farm in being State Land, respondent had the powers to withdraw the offer letter. To buttress its position, respondent also relied on para 7 of the offer letter which gives the Minister the right to withdraw or change the offer if he deems it necessary. As regards ground 3, respondent conceded that it made an error but not providing a time limit within which to vacate the farm and undertook to address this administratively. As for compensation, it was respondent's position that applicant cannot claim from respondent but from the Compensation Committee.

Section 3 of the Administrative Justice Act [*Chapter 10:28*] which applicant premised his application provides as follows:-

“Duty of Administrative Authority:-

- (1) an administrative authority which has the responsibility or power to take any administrative action which may affect the rights, interests or legitimate expectations of any person shall:-
 - (a) act lawfully, reasonably and in a fair manner; and
 - (b)
 - (c) where it had taken the action, supply written reasons therefore within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to supply reasons by the person concerned.
- (2) In order for an administrative action to be taken in a fair manner as required by para (a) of subsection (1) an administrative authority shall give a person referred to in subsection (1)
 - (a) adequate notice
 - (b)

(c) adequate notice of any right of review or appeal where applicable.”

As stated earlier in this judgment, applicant was given various reasons for the intention to withdraw the offer of land. The last one was stated in the last letter dated 29 June 2021. Since time immemorial applicant was made aware of the intention to withdraw the offer of land though different reasons were given. He was not averse to the withdrawal of the offer.

In the letter of the 29 June 2021 the reason was given as, the land being required for public purposes.

In his letter of the 10 May 2022, applicant sought reasons for the withdrawal of the offer of land. Respondent did not reply to the letter or better still did not avail the reason(s).

I do not find that respondent flouted s 3(1)(c) of the Administrative Justice Act (AJA). Applicant was given the reason in the letter of intention to withdraw.

In my view applicant’s submission that he meant reasons for the withdrawal and not for the intention to withdraw is to look for a difference where there is no difference. As submitted by respondent, respondent will be repeating the same reason it gave in its letter of intention to withdraw.

It could have been different and respondent could have been found to have flouted the said provision if respondent had taken the action of withdrawal without giving applicant the notice of intention (with reasons) to withdraw. This ground is without merit.

Indeed applicant was not advised of his rights in terms s 2(1)(c) of AJA. He was not advised that he could seek review of or appeal the decision to withdraw his offer of land. Neither was he advised of the time frame within which to vacate the land. Was this irregularity so fatal that it caused applicant prejudice or results in substantial injustice. Applicant did not allude to any prejudice he suffered. Respondent conceded that administratively the irregularity will be addressed. In my view therefore, the non-compliance with s 2(1)(c) is not so fatal an irregularity that it calls for the setting aside of the respondent’s decision.

The Gazetted Land (Consequential Provisions) Act, [*Chapter 20:28*] defines “acquiring authority”, as the Minister responsible for land or any other Minister to whom the President may from time to time, assign the administration of this Act. In terms of the Land Commission Act [*Chapter 20:29*] Minister is the Minister of Lands and Rural Resettlement or any other Minister to whom the President may from time to time, assign the administration of this Act. In the Gazetted

Land (Consequential Provisions) Act, offer letter is defined as a letter issued by the acquiring authority to any person that offers to allocate to that person any Gazetted Land or a portion of Gazetted Land, described in that letter.

In terms of the definition of acquiring authority, the Minister for Lands is an acquiring authority. Although s 6 of the said Act refers to offer letters issued on or before the fixed date, I am of the view that, in view of this section, the Minister, respondent *in casu*, has the power to withdraw offer letters.

Section 6 reads:-

“Validation of offer letters issued on or before the fixed date. Any offer letter issued on or before the fixed date that is not withdrawn by the acquiring authority is hereby validated.” (emphasis added)

In turn therefore para 7 of the offer letter which gives the Minister the right to withdraw or change the offer if he deems it necessary is not *ultra vires* the Act.

Section 27 of the Land Commission Act that provides for compensation which applicant is relying on provides as follows:-

“President may retake for public purposes:-

- (1) The President may, at any time and in such manner and under such conditions as he or she may deem fit, retake possession of land alienated in terms of this Act or any portion thereof, for the State, local authority or public purposes on payment to the lessee or grantee, as the case may be, of such compensation as may be agreed upon or, failing such agreement, as may be determined by arbitration;

Provided that if the land retaken is land held under ninety-nine lease compensation shall be payable only for the improvements to such land on the date of retaking.” (emphasis added)

It is common cause that applicant is not a ninety-nine year lease holder, neither is he a holder of a lease with an option to purchase nor other holder of a lease for agricultural land as defined in this Act. As per the definition of holder in this Act, applicant is a “holder”. A holder is defined as meaning 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. If applicant was meant to be covered by s 27, holder could have been specifically mentioned. Instead the section only mentions lessee and grantee neither of which covers applicant.

Having considered all the grounds for review, I find that none of them is sustainable. To that end the application for review cannot be granted. It is therefore ordered that it be and is hereby dismissed with costs.

J Mambara & Partners., applicant's legal practitioners
Civil Division of the Attorney General's Office, respondent's legal practitioners