

**DESIRE NKOMO**

**Versus**

**GONAH**

**And**

**MPOFU**

IN THE HIGH COURT OF ZIMBABWE  
MABHIKWA J  
BULAWAYO 12 FEBRUARY & 18 MARCH 2021

**Urgent Chamber Application**

*N. Sithole* for applicant  
*Miss S. Z. Mpofu* for respondent

**MABHIKWA J:** Applicant made an urgent chamber application against the two (2) respondents whom he says he knew only as Chef Gona and Mpofu respectively. He claims that he became a beneficiary of plot number 1 Umguza, Lower Nondwane of Unguza in the year 2020. He however says he was not given an offer letter when others were given, he still does not know why.

The applicant says that 1<sup>st</sup> respondent also claims the right to occupy the same plot, number 1 of Lower Nondwane, Umguza Rural District Council. He says that on 28 January 2021 1<sup>st</sup> respondent was alleged to have passed by the police station at Queens Park where the applicant had made a report and insisted that certain nine (9) men, be charged with trespassing and violating Covid 19 regulations. He says that 1<sup>st</sup> respondent is said to have passed by the police station wielding an offer letter. He also claims that the 2 respondents, through the said 9 men are intent on building permanent structures at his allocated farm and effectively evict him. He says that he was authorized or was allocated the farm and has a certificate of occupancy from Umguza Rural Council.

The applicant then narrates a long dispute with the 9 men in winding and unduly flippant language most of which is irrelevant for an urgent chamber application. There seems to have been accusations and counter accusations from both sides. There also seems to have been more arrests on both sides. Applicant prays for an order in the interim.

**Respondents**

The 1<sup>st</sup> respondent corrects the citation in that she is in fact not Chef Gona but Michelle Gonah. She states that she was allocated the farm by the Ministry of Lands, Land Reform and Resettlement through Umguza Rural District Council in terms of the A2 offer letter dated 3 October 2019. The offer letter is attached to the notice of opposition. She states further that at the time she was granted the offer letter, the farm was deserted with no one, and no stock kept on it. The place had nothing other than a deserted and dilapidated old

cattle kraal and a small dwelling room structure which looked like it was meant to be a pit latrine.

This court notes most importantly, the following terms and conditions on the offer letter

1. The Ministry in terms of condition 1 expects the 1<sup>st</sup> respondent to take permanent residence on the holding upon acceptance of the offer and communication be made to the Ministry within thirty (30) days.  
So, the 1<sup>st</sup> respondent cannot avoid taking immediate occupation. Building of structures and other activities are indicative of taking permanent residence as expected in the offer letter. The applicant refers to the same action as rude and unlawful.
2. The Ministry, through condition 4 of the offer letter “reserves the right to recommend withdrawal or to change the offer if it deemed it necessary”. So *prima facie*, it is the Ministry of Lands that reserves the right to withdraw or change the conditions of the offer.
3. The offer letter in clause 5 states that;  
“The interpretation of this offer solely lies with the Ministry of Lands and Rural Resettlement and the undersigned office” meaning the Agricultural Lands office. The court notes, and agrees as submitted *in limine* by first respondent that the applicant did not cite the Ministry and the Land Officer at all, neither does he complainant about them at all in his application.

Clearly from case law, the offer letter is the one that grants a person the *prima facie* right of ownership or occupation. Applicant has none whilst the 1<sup>st</sup> respondent has an offer letter

- See: (i) *J.C. Conolly and Sons (Pvt) Ltd vs R. C. Ndhlukula & Anor* SC-22-18  
(ii) *Eriza Muhala & 50 Ors vs Patrick T. Mukorera* CCZ-2-19  
(iii) *Commercial Farmers Union & Ors vs The Minister of Lands & Rural Resettlement & Ors 2010 (2) ZLR 576 (S)*  
(iv) *TBIC Investments (Pvt) Ltd & Anor vs Kennedy Mangenje & 5 Ors* SC-13-18

I am inclined to agree also that there is a fatal misjoinder notwithstanding Rule 87 of the High Court Rules 1971 on misjoinder. See *Brian Davies vs Floyd Ambrose* HB-50-20

Firstly, the misjoinder is one that renders the order sought unenforceable.

Secondly, it is clear from the nature of the case that this is state land not privately owned land. It is state land where individuals are offered leases or occupation letters. The 1<sup>st</sup> port of call is the Ministry of Lands and Rural Resettlement and the Lands office. It is only after then and depending on the outcome from that office, would the matter come to this

court. The applicant completely avoided that 1<sup>st</sup> port of call which is also the obvious alternative remedy.

4. The court also notes that there are triable issues in this matter which include the issue of who was offered the place and therefore the claim of right. As shown above, there is a plethora of cases to the effect that in communal land resettlement disputes the offer letter takes precedence over other documents let alone alleged letters or phone calls of promises made to the effect that one would be given an offer letter. I agree that a simple certificate of occupancy cannot prove ownership. In my view, respondent, who was in fact given an offer letter, has a better right or *prima facie* claim.

One other issue in dispute that necessarily needs to be resolved is that of double allocation, if any, by the Ministry of Lands. The said disputes of fact cannot be resolved on the papers, let alone in an urgent chamber application.

The other issues and allegations, including the allegations and counter allegations of arrests or police allegedly siding with the respondents are largely irrelevant in this forum. The applicant has not shown why the matter should be allowed to “jump” the queue of other cases.

In the circumstances and from the above, I accordingly order as follows that;

1. The matter is not urgent.
2. There are disputes of fact in the matter which are incapable of being resolved on the papers.
3. The applicant has not exhausted initial and alternative remedies in the matter which are clearly provided for and apparent from the papers.
4. There is a clear and fatal misjoinder in the application.
5. The matter is removed from the roll of urgent matters.

*Ncube Attorneys*, applicant’s legal practitioners  
*Kossam Ncube & Partners*, respondents’ legal practitioners