

ANDREW MARINGA
versus
MINISTER OF LANDS, AGRICULTURE, WATER,
CLIMATE AND RURAL RESETTLEMENT
and
WINRAY ESTATES (PVT) LTD

HIGH COURT OF ZIMBABWE
NDLOVU J
HARARE, 30 March, 01 and 23 June 2022

DECLARATUR APPLICATION

Ms -Ushe, for the applicant
Ms F.R Gustin for the 1st respondent
Adv Chinwawadzimba, for the 2nd respondent

NDLOVU J. At the end of hearing this opposed application I dismissed the application and indicated that a party desirous to have the written reasons indicate as much and such shall be given. The applicant has since requested for the written reasons behind the dismissal and hereunder are the reasons:

NATURE OF THE APPLICATION

This is an application made in terms of s 14 of the High Court Act [*Chapter 7:06*] wherein the applicant is seeking an order declaring him the lawful holder of an offer letter and accordingly entitled to occupy a certain farm (“the farm”) otherwise known as Subdivision B of Kashao, and an eviction of Winray Estates (Pvt) Limited from the said farm and any other person claiming occupation through them.

BACKGROUND FACTS

On 01 December 2006, the applicant was, by means of an offer letter, offered the farm in issue measuring approximately 1563.58 hectares, after it had been gazetted for compulsory acquisition in the Government Gazette (GN 291/2003) by the first respondent (the Ministry). The applicant has never been able to take occupation of the farm owing to a combination of

litigation over the farm and non- preparedness to vacate the farm by the second respondent represented by its director who is an indigenous Zimbabwean and the change of attitude by the first respondent.

The litigation began with the criminal prosecution at Chinhoyi Magistrates Court of the second respondent together with its Director for ignoring an eviction notice to vacate the farm CRB MT 86/11. The superior courts got involved as well, see HC 9831/15, HC 5604/16, SC 279/18 and CCZ84/11 to no resolution of the matter. Ultimately the Ministry on 13 October 2016 wrote to the applicant indicating its intention to withdraw the offer letter from the applicant on the basis that the farm is indigenously owned and calling upon him to make any representations he may have within 7 days of receipt of the notice. This notice was followed by the withdrawal of the land offer letter by the Ministry from the applicant on 22 November 2017 indicating that the purpose for the withdrawal outweighed the representations the applicant had made. On 4 June 2020 the applicant then mounted this application for a Declaratur seeking the relief I have indicated above. The application was opposed.

A DECLARATUR

The purpose of a declaratur is to define rights of an applicant. From that premise, the applicant must be an interested person with substantial and/or direct interest in the subject matter of the application. Such interest must relate to an existing, future or contingent legal right. The above requirements are the condition precedent to the grant of a declaratory order provided for under s 14 of the High Court Act [*Chapter 7:06*].

Johnson v AFC 1995(1) ZLR 65 (SC)

MDC v President of the Republic of Zimbabwe & Others HH 28/2007

THE LAND OFFER LETTER

A holder of a valid offer letter is endowed with the requisite lawful authority to hold, use and occupy Gazetted land in Zimbabwe and is protected from eviction. While there is no proper statutory basis (I was directed to) for the creation or termination of rights granted by offer letters, the basis of offer letters is administrative. The existence or otherwise of an offer letter is subject to administrative rules and discretion which must be exercised lawfully, reasonably and fairly.

Sigudu v Minister of Lands and Rural Resettlement (NO) and others HH 11/2013.

An offer letter is a valid legal document when issued by the requisite authority, in this case the Ministry. The holder of such offer letter has the legal right to occupy and use the land allocated to him in terms of the offer letter.

Commercial Farmers Union & Others v Minister of Lands and Rural Resettlement and Others SC 31/10.

APPLICANT'S CASE

Applicant's argument was that after he was offered the farm, he was later posted to Russia on a Diplomatic mission. He was not served with the notice of the intention to withdraw the offer letter and did not make any representations in that regard. He was therefore not aware of the notice and neither was he aware of the said withdrawal of the offer letter as he was in Russia at the material time. He brought the matter to this court seeking a Declaratory order after a correspondence received in December of 2019 from the first respondent pursuant to a letter he wrote on 6 November 2019 requesting the first respondent to facilitate the eviction of the second respondent from the farm.

Applicant further argued that the first respondent has no power to withdraw an offer letter. He is of a strong suspicion that there is collusion between the respondents judging by the timing of the withdrawal of the offer letter and the advice given to him by the first respondent in December 2019 to seek a Declaratory order while not mentioning the withdrawal of the offer letter at that stage.

In a nut-shell the applicant is suspicious and queries the said withdrawal of the offer letter by the Ministry. He is dissatisfied with the conduct of the Ministry which according to him purported to withdraw its offer letter alive to the drawn-out litigation and prayed for the success of his application.

RESPONDENTS' CASES

First respondent was of the strong view that the applicant has no *locus standi* in this matter since the offer letter in his favour was lawfully withdrawn. The notice of intention to withdraw and the withdrawal of the offer letter were duly served on the applicant. The second respondent basically joined the first respondent in the hymn and verse further arguing that with

the offer letter withdrawn, the farm ownership and title over it reverted to it. That this is a matter for review.

RESOLUTION

The Minister of Lands, Agriculture, Water, Climate and Rural Resettlement is the authority reposed with the power to issue and/or withdraw an offer letter for land to an individual in this country at any time. His actions in that regard are valid until set aside. In this matter the Minister says indeed he offered the applicant the land, he has since withdrawn that very offer. The applicant is not only aggrieved but is also suspicious of that move by the Minister. Courts are reluctant to interfere with administrative decision of those authorities with the requisite legal power to make those decisions without being appropriately and procedurally moved to. In this case there are also disputes of fact regarding the applicant having been aware of the intention and decision by the Minister to withdraw the offer letter.

The questions then that arise are; Is this an appropriate case for a court to define the parties' rights without unduly interfering with an administrative decision of a requisite authority and, Has the applicant adopted the correct legal procedure to address the grievances he might have. I am of the view and conclusion that the Applicant has a right, if aggrieved as he appears to be by the Minister's decision, to test the fidelity of that decision in a court of law however an application for a Declaratory order is not the appropriate medium through which to exercise that right to question an administrative body's decision in the circumstances of this case.

It is for the above reasons that I dismissed the application and ordered as follows:

IT IS HEREBY ORDERED THAT:

- 1) The application be and is hereby dismissed
- 2) There shall be no order as to costs

Sachikonye-Ushe Lergal Practice, applicant's legal practitioners.
Civil Division- of the Attorney General's Office, 1st Respondent's legal practitioners
Chimwamurombe Legal Practice, 2nd Respondent's legal practitioners.