

JONATHAN NATHANIEL MOYO

and

BEATRICE AMBIYO MOYO

versus

MINISTRY OF LANDS, AGRICULTURE, WATER, CLIMATE AND RURAL
RESETTLEMENT

HIGH COURT OF ZIMBABWE

TAGU J

HARARE 10 November, 2020 & 17 February, 2021

Opposed application

T Mpofu, for applicants

C. Sigoza, for respondent

TAGU J: This application is brought in terms of section 3(1) (a) of the Administrative Justice Act [*Chapter 10:28*] and it seeks a review and the concomitant setting aside of respondent's decision to withdraw applicants' offer letter in respect of Remainder of Patterson Farm which is 622.9125 hectares in extent (the farm). It also seeks the setting aside of the respondent's directive for the applicants to cease occupation and use of the farm.

INTRODUCTION

Jonathan Nathaniel Moyo is an exiled adult Zimbabwean and the first applicant. Beatrice Ambiyo Moyo is an adult female Zimbabwean resident, and a Kenyan national who is the first applicant's wife. The Respondent is a Zimbabwean Minister responsible for agricultural land and is cited in his official capacity.

THE FACTS

The first applicant was offered State land holding, Model A2 Phase 11 at Paterson (S/D1) in the District of Mazoe, Mashonaland Central Province by the respondent at an annual rental to be advised measuring 622.9125 hectares in extent on the 30th November 2001. He accepted the offer on the 2nd of December 2001. He took possession of the said land and has been carrying out some agricultural activities at the farm since then. Paragraph 5(b) (ii) of the offer letter indicated that the lease shall be up to 99 years with the option to purchase, which option was to be revealed by the Minister from time to time. In terms of that provision the Minister did on 29th April 2002 reveal that government was offering the farm to the applicant for \$6 million which was then equivalent to US\$105.401.84. The payment was made on the 27th July 2002 and the respondent received it under receipt number 955419. Later by letter dated 22 May 2019 the respondent advised the first applicant of his intention to withdraw the land offer on the basis that the farm was to be downsized as it is being underutilized. The first applicant was further asked to make representations to the respondent in writing showing cause why the farm should not be downsized.

The first applicant duly made representations. Having considered the representations by the first applicant the respondent by letter dated 10 December 2019 advised the first applicant that the representations he had made failed to find favour with the respondent. Attached to that letter was a letter dated 11 December 2019 communicating that the land offer made in respect of the farm had been withdrawn with immediate effect and that first applicant was to wind up all his operations and vacate the piece of land “within-----days”

The first applicant averred that the letter dated 11 December 2019 does not talk of downsizing and the notice of withdrawal did not give him the effective date. He is of the view that the fact that the farm is underutilized is based on falsehoods given that he invested millions on the farm and that he was hampered in his representations by the fact of his being in exile and the well-known fact that his house had been attacked and ransacked by members of the Zimbabwe National Army during the November 2017 military intervention. To him the withdrawal is politically motivated.

The applicants are now seeking the following order-

“IT IS ORDERED THAT

1. The withdrawal of First Applicant’s land offer in respect of Remainder of Patterson Farm which is 622.9125 hectares in extent is reviewed and set aside as being contrary to section 3(1)(a) of the Administrative Justice Act (Chapter 10:28).
2. Respondent’s directive for the Applicants to cease occupation and use of the Remainder of Patterson Farm which is 622.9125 hectares in extent is set aside as being invalid.
3. Respondent shall bear the costs of suit.”

The respondent filed a notice of opposition to the application. The respondent raised a point *in limine* that the applicants did not cite the correct respondent since they cited the Ministry instead of the Minister. The applicants in their answering affidavit stated that they introduced the respondent as the Minister and Ministry. I also considered the respondent’s heads of argument. He or it did not pursue the point *in limine*. I will not waste time on it.

As regards the application section 3(1) (a) of the Administrative Justice Act [Chapter 10:28] under which this application has been filed states as follows-

“3. Duty of administrative authority

- (1) An administrative authority which has the responsibility or power to make any administrative actions which may affect the rights, interests or legitimate expectations of any person shall –
 - (a) act lawfully, reasonably and in a fair manner,...

The first applicant clearly stated in his founding affidavit (paragraph 5) that this is an application for review in terms of section 3 (1) (a) of Administrative Justice Act (*Chapter 10:28*) and that he is challenging the decision to withdraw his offer letter. All that is required of this Honourable Court is to determine whether or not the respondent exercised his power lawfully and procedurally. See *Sigudu v Minister of Lands and Another* HH-11/13.

The respondent denied that this is a politically motivated action to withdraw the applicants' offer letter. He alleged everything was done transparently and the first applicant was given an opportunity to make representations before the withdrawal was done.

As I said above the issue before this Honourable Court is whether or not the decision to withdraw the first applicant's offer letter was done in lawful and procedurally fair manner. In other words did the respondent act lawfully, reasonably and in a fair manner in withdrawing the first applicant's offer letter? The court in deciding this matter took judicial notice of what caused the first applicant to be in exile. Despite what happened politically, the first applicant was advised by the respondent of the respondent's intention to withdraw his offer letter and or to down size his farm. The first applicant was duly given an opportunity to make representations which he did through his legal practitioners on the 26th of November 2019. Therefore the applicants cannot argue that they were not given an opportunity to be heard. The first applicant was given seven (7) days within which to make representations and he did so and was thus heard. See *Taylor v Minister of Higher and Tertiary and another 1996 (2) ZLR 772 (S)*, *Guruva v Traffic Council of Zimbabwe SC-30/08*.

Moreover the respondent in response to the representations made by the first applicant clearly indicated that having considered the representations made and concession that the farm was underutilized (though disputed) he was continuing with the downsizing exercise and he withdrew the offer letter.

At law in order to have a new offer letter in respect of the downsized farm the old letter must be withdrawn in its entirety. In his heads of argument and oral submissions by the counsel for the respondent, it is conceded that a new offer letter will be issued to the first applicant once the re-planning exercise has been done. A further concession was made that the first applicant is not required to cease operations and vacate the farm due to the fact that a new offer letter will be issued to him on the same piece of land. According to the respondent the farm is being downsized as indicated in the notice of withdrawal and in the reasons given on the 10th of December 2019 by the respondent. While the issue of winding up operations appear on the notice, the court noted that a prepared Standard Form was used hence there was no date endorsed for the applicants to leave the farm. The issue of vacating the farm does not arise. I agree with the respondent that the offer letter is valid and there is no need for an order to set aside the directive directing the first applicant to vacate the farm as the first applicant is not required to vacate the farm altogether.

For the above reasons I will dismiss the application. What is clear is that the use of prepared Standard Form caused the applicants to suspect that they are being chased away from the Farm when that is not so. For that reason there is no need for them to pay the costs.

IT IS ORDERED THAT

1. The application is dismissed.
2. Each party to bear its own costs.

Atherstone and Cook, applicant's legal practitioners
Civil Division of the Attorney General's Office, respondent's legal practitioners.