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EX-TEMPORE

CLEVER NJOVANA
v
(1) KUDAKWASHE KARAGA (2) THE MINISTER OF
LANDS, WATER, CLIMATE AND RURAL RESETTLEMENT
N.O

SUPREME COURT OF ZIMBABWE
MAKONI JA, CHIWESHE JA & MUSAKWA JA
HARARE: 23 NOVEMBER 2021

Mr. T.S.T Dzvettero, for the appellants

Mr. E. Dondo, for the first respondent.

Mr. D. Jaricha, for the second respondent.

MAKONI JA: After hearing the above matter, the court delivered an ex tempore judgment. The first respondent has requested for the same.

This is an appeal against the whole judgment of the High Court handed down on 11 November 2020 wherein the first respondent was granted an eviction order against the appellant. Aggrieved by this decision the appellant noted the present appeal on several grounds of appeal which can be reduced to one issue which is whether the court *a quo* erred in granting the eviction order.

The first respondent is in possession of an offer letter issued by the second respondent on 16 June 2014 in respect of sub division 2 of Lot 1 of Averlan in Hurungwe

Mashonaland West Province measuring 37 hectares (the farm). On the basis of this offer letter the first respondent approached the court *a quo* seeking the eviction of the appellant who is in occupation of his farm.

The appellant opposed the application on the basis that he also had an offer letter to the same farm which offer letter he claimed to have been irregularly withdrawn.

The appellant had initially approached the Magistrate's Court seeking the eviction of the first respondent which application was dismissed on the ground that his offer letter had been withdrawn. He noted an appeal against this decision which he subsequently withdrew. That judgment by the Magistrates' Court is therefore extant. The court *a quo* relying on the authorities of *Masunda v Minister of State for Lands and Anor* 2006 (2) ZLR at 72 and *Fungai Chayeruka v the Minister of Lands and Rural Resettlement and Anor* HH75/14, and on the judgment of the Magistrate's Court made a finding that the first respondent was entitled to the relief that he sought and that appellant had no right to remain on the land. We agree with the findings of the court *a quo* that the appellant had no right to remain on the land.

Regarding the issue of the Magistrates' Court judgment, Mr *Dzvetero* sought to argue that the judgment was a nullity for want of jurisdiction. Notwithstanding this submission, that judgment is extant as it has not been set aside on appeal or on review. We believe that his interpretation of the authorities that he relied on is flawed in that it is given out of context. Such an interpretation would lead to chaos in the administration of justice.

Mr. *Dzvetero* submitted that the first respondent's offer letter was a nullity for various reasons. The position of the matter is that the validity of that offer letter has not been challenged in the appropriate forum which would be the second respondent or the court *a quo*

by way of review or appeal. That being the case the first respondent's offer letter is presumed to have been properly issued and therefore valid.

Similarly the withdrawal by the second respondent of the appellant's offer letter is presumed valid until it has been set aside. The court was informed that the appellant has now approached the High Court seeking a review of the second respondent's decision. This in our view is the appropriate remedy for a party raising a complaint against an administrative authority such as the second respondent. He could have raised the issue in the court *a quo* by way of counter application which he did not do.

Therefore, the appeal has no merit and should be dismissed. There is no reason to depart from the general practice that costs follow the cause.

Accordingly, it is ordered as follows:

“The appeal be and is hereby dismissed with costs.”

CHIWESHE JA : I agree

MUSAKWA JA : I agree

Antonio & Dzvettero, appellant's legal practitioners

Saunyama & Dondo legal practitioners, 1st respondent's legal practitioners

Civil Division of the Attorney General's Office, 2nd respondent's legal practitioners