Judgment No. HB 51/07
Case No. HC 773/03

LANDELA SAFARIS P/L
T/a BROOKLANDS SAFARIS

Versus

CHAIRMAN, PARKS AND WILDLIFE BOARD N.O.

And

DIRECTOR, NATIONAL PARKS AND WILDLIFE MANAGEMENT AUTHORITY N.O.

IN THE HIGH COUT OF ZIMBABWE
CHIWESHE J
BULAWAYO 30 APRIL 2003 & 14 JUNE 2007

S S Mazibisa, for applicant
P Ncube, for the defendants

Judgment

CHIWESHE J: The applicant filed an urgent chamber application for a provisional order to first and second respondents to give it access to and use of certain hunting facilities referred to as the Deka Pool Area, Matabeleland North.

I dismissed the application with costs and indicated that the reasons for that decision would follow. These are they.

On or about 22 November 2001 the applicant submitted a joint venture proposal between itself and the National Parks and Wildlife Management Board for the Deka Pool Area of Matabeleland North. The idea was to market the area for game hunting and safari operations and share the proceeds of any business so arising. After protracted negotiations an agreement was drafted for signature by the parties, including the Minister of Tourism, being the responsible Minister in terms of the governing legislature.

On the basis of the understanding between the cited parties the applicants proceeded to act as if the agreement was already in place. They spent considerable sums of money to lure foreign hunters including a visit by its staff to the United States

of America. They did this on the basis of a letter by the cited respondents giving a clear indication that they could move into the area and start marketing it pending finalisation of administrative issues. To its utter dismay on 25 February 2003 the applicant received a letter from the respondents advising that the Minister

had reversed the joint venture with immediate effect. No reasons were given nor was the applicant furnished with a letter from the Minister to that effect. Further correspondences and discussions yielded no favourable response for the applicant.

Aggrieved by the turn of events the applicant file the present papers on an urgent basis. However, for the following reasons the application was still born. Firstly, as indicated by the respondents in their heads of argument the applicant did not cite the Minister of Tourism as a respondent. In terms of the Parks and Wildlife Act, Chapter 20:14 any powers relating to the regulation and administration of the Act lie with the Minister. Further in terms of section 60 thereof the Minister is specifically empowered to administer any business arising out of that section. For that reason the application is fatally defective as the first and second respondents have no power to comply with the order sought.

Secondly, only a draft agreement has been filed. The draft has not been signed by the Minister or anyone for that matter although it provides for the signature block of both the Minister, the Director of Parks and Wildlife as well as the applicant. In short it has not been demonstrated that apart from flattering correspondences an agreement was in fact entered into as alleged.

Assuming that a binding agreement had indeed been reached through conduct or otherwise and subsequently repudiated, no plausible argument has been raised on the papers as to the propriety or otherwise of such repudiation in light of the

provisions of section 60(4) which empowers the Minister in the interests of preservation or conservation, propagation or control of any wild life to prohibit without giving reasons the hunting of small wild life or the giving of authority to so hunt.

In any event under subsection 7 of section 60 as read with section 58 of the Act an efficacious and effective domestic remedy is provided for. It is provided that an aggrieved party may request an inquiry within thirty days of notification of a decision and the authority shall within twenty one days of such request refer the matter for inquiry to a commissioner appointed for that purpose. No compelling reasons have been given by the applicant as to why that domestic remedy was not pursued.

Further, the urgency of the application is doubtful given the time lapse between the date the decision complained of was communicated and the date that the application was filed. The applicants took almost three months to institute an urgent application. In any event matters such as the present which are administrative in nature should be brought to the High Court by way of review. In terms of the rules an application for review must be a court application. The applicants have filed a chamber application.

It was for these reasons that the application was dismissed with costs.

Cheda & Partners, applicant's legal practitioners
Civil Division of the Attorney-General's Office c/o Coghlan & Welsh defendants' legal practitioners