PETROMOC EXOR (PRIVATE) LIMITED
versus
KUDZANAI CHIMEDZA
and
CRANRID PETROLEUM (PRIVATE) LIMITED
and
THE MINISTRY OF LANDS, AGRICULTURE, WATER
CLIMATE AND RURAL RESETTLEMENT
and
THE SHERIFF

KUDZANAI CHIMEDZA
And
THE MINISTRY OF LANDS, AGRICULTURAL, WATER
CLIMATE AND RURAL RESETTLEMENT
And
PETROMOC EXOR (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 12 August and 28 September 2021

Opposed Application

Mrs *R Mabwe*, for the applicant
M Ndlovu, for the respondents

MANGOTA J: I heard this application on 1 July 2021. I struck it off the roll with costs.

On 1 July 2021 the applicant's legal practitioners wrote to the registrar of this court. They requested written reasons for my decision. These are they:

The applicant premised its application on a lease which it claimed it signed with the third respondent. The lease, it alleged, was to endure from 17 July 2019 to 31 June 2024. It stated that it leased Duncombe Fuel Filling Station ("the property") from the third respondent. The lease excluded the Bulk Fuel Reservoir, according to it. It moved me to:

(i) declare it to be the lawful lessee and occupier of the property;

(ii) interdict the first and second respondents from occupying the property - and

(iii) evict the mentioned respondents from the property.

The first respondent opposed the application. He placed reliance on his annexure "A" in terms of which the Provincial Lands Officer for Mashonaland Central Province recommended that he be allowed to rent the property. He alleged that he concluded a lease of the property with Mazowe Rural District Council which, according to him, derived its mandate to lease the property to him from the third respondent. He challenged the authenticity of the lease Annexure B, which the applicant allegedly concluded with the third respondent on 17 July 2019. He moved me to dismiss the application with costs.

The property which is the subject of this application is situated a Duncombe Farm which is in the district of Mazowe. The farm was acquired by Government on 18 January 2002. It was acquired in terms of Government Gazette Extraordinary Vol. LXXXNo. 5.

It follows, from the stated fact, that any person who occupies the whole or any portion of the farm can only do so with the lawful authority of the Government of Zimbabwe. He should, in other words, be in possession of any of the documents which are mentioned in s 2 of the Gazetted Land (Consequential Provisions) Act [*Chapter 20:28*] ("the Act"). These comprise:

(a) an offer letter; or
(b) a permit; and/or
(c) a land settlement lease.

The question which begs the answer is which authority in Zimbabwe has the power to issue any of the abovementioned documents to natural persons or legal entities who or which intend to possess or occupy the whole, or a portion, of State land. The interpretation section of the Act provides a partial answer to the same. It defines the phrase "acquiring authority" to mean the Minister responsible for land or any other Minister to whom the President may, from time to time, assign the administration of the Act. It defines the phrase "*offer letter*" to refer to offer letter which is issued by the acquiring authority to any person that offers to allocate to that person any gazetted land or a portion of gazetted land described in that letter.

A land settlement lease is provided for in the Agricultural Land Settlement Act [*Chapter 20:01*]. Section 8 of the same confers power on the Minister to issue leases to interested applicants. It reads:

> "8. The Minister may, subject to this Act, issue leases to applicants in respect of holdings of land."

It defines the word "Minister" to mean the Minister of Lands and Water Resources or any other Minister to whom the President may, from time-to-time, assign the administration of the Act.

It is clear, from a reading of s 2 of the Act as read with s 8 of [*Chapter 20:01*], that the power to issue offer letters and/or leases is confined to no one else but the Minister. The legislature spoke clearly and loudly on this matter. It did not allow the Minister to whom it conferred the authority to issue offer letters or leases to applicants to delegate his authority of issuing offer letters and/or leases to officials who work under his supervision in a Ministry in which he is the Minister. Perhaps, the legislature intended to avoid such situations as the first respondent is portraying when it restricted the issuance of offer letters and land settlement leases to no one else but the Minister whom the President appoints for purposes of dealing with land matters.

Judicial notice is taken of the fact that land is a very emotive issue. It caused, and still causes, many people to perish in wars which have or are aimed at asserting their rights in this very valuable but also very finite God-given resource. It occurs to me that when the legislature conferred the power to issue offer letters and land settlement leases to the Minister who is responsible for land or to any other Minister whom the President appoints for the purposes of dealing with land matters, its clear intention was to ensure consistency as well as to avoid unnecessary wars, disputes and/or litigation.

Because the legislature spoke in a clear and unambiguous language on the point which relates to the authority which has the power to issue offer letters and land settlement leases, its language cannot be misconstrued at all. It should, in other words, be taken as it appears in the statute books which I have already referred to. It rides on the known and accepted principle which states that the mention in a statute of one thing excludes the other or other things.

Annexure "B" which the applicant attached to its application shows that it applied to lease the property for fuel distribution. Reference is made in the mentioned regard to p 42 of the record. The following officers, it is observed, supported the application:

(i) the district land officer

(ii) the provincial estate management officer - and

(iii) the chief land officer.

The lease, Annexure 15 which the applicant attached to its founding papers, appears at pages 11 to 18 of the record. It states, at p 11, that the Minister of Lands, Agriculture, Water and Rural Resettlement entered into an agreement of lease with the applicant. The lease, it is pertinent, constitutes the applicant's cause of action against the first and second respondents. It was not, however, signed by the Minister as per the provision of the law. It was signed by the Under-Secretary for Rural State Land. He signed it for, and/or on behalf of, the Minister.

The long and short of the observed matter suggests that the Minister issued the lease to the applicant through the under-secretary presumably of the Ministry which the Minister supervises. The question which begs answer is; does the Minister have the power, at law, to issue an offer letter or a land resettlement lease through an official who works in his Ministry? Does he, the question goes, have the power to delegate to the Under-Secretary his authority to issue the land resettlement lease to such persons as the applicant? The answer is definitely in the negative. The same question, viewed from a different perspective, is does the Under-Secretary have the power, at law, to sign the lease for, and on behalf of, the Minister. The answer is that he does not have such power.

It is pertinent to note that, when the legislature enacted the sections which confer power or authority on the Minister to issue offer letters and leases, it made a clear distinction between the Minister, on the one hand, and officers who work under his supervision, on the other. It also made a clear division of labour between them. It realised that the Minister, as a natural person, cannot work alone. It remained alive to the fact that officers who work under the supervision of the Minister come in handy to do the ground work for the Minister's attention. The recommendations which the district lands officer, the provincial estate management officer and the chief lands officer, for instance, made in regard to the application of the applicant should have assisted the Minister in his decision to offer, or not to offer, the land settlement lease to the applicant. The work of the officers, therefore, terminates at the recommendation stage. It leaves the Minister to read their recommendation as well as to place reliance upon it and to issue the lease to the applicant. The decision and action of

issuing the lease rest with no one else but him. The act of issuing offer letters and/or leases to prospective applicants for land excludes officers of the Ministry. The law does not confer any power on them to issue those documents.

It goes without saying that the lease which the under-secretary issued is not valid. It has no legal force or effect. It violates clear provisions of the law. The Under-Secretary cannot issue any lease to anyone, let alone to the applicant. He has neither the power nor the authority to do so. The Minister has neither the power nor the authority to allow the Under-Secretary to issue the lease to the applicant. He cannot delegate the responsibility which is reposed in him to the Under-Secretary. The mandate to issue the offer letter or the lease lies with no one else but the Minister.

Because the lease is the main reason for this application, its efficacy requires further scrutiny. That is pertinent because I must be satisfied that the applicant managed to prove its case on a balance of probabilities. Further examination of the lease reveals a number of incongrous features.

The applicant, it is observed, is a legal entity. It, therefore, has no eyes to see or ears to hear, or mouth to speak; or hand to sign or write any documents(s) which relate(s) to any agreement(s) which it concludes with anyone person – natural or fictitious. The parties to the lease appear at p 11 of the record. The applicant's name is shown as it appears on its certificate of incorporation. The natural person who negotiated the terms of the lease with the under-secretary remains unmentioned and therefore unknown. The natural person who signed the lease for, and on behalf of, the applicant remains unknown. In fact, the signature which appears under the designation leasee does not show if the signatory signed on his own behalf or on behalf of the applicant. The applicant, as a legal entity, could not have signed the lease at all. Some natural person who remains unknown signed, not for the applicant though. He does not indicate if he signed in his own right or in a representative capacity. One is left to wonder if the applicant which is a fictitious person had the capacity to sign the lease.

It is for the mentioned reason, if for no other, that the first respondent was quick to cast doubt on the authenticity of the lease which the applicant attached to its application. The fact that the lease was not legible from pp 13 to 18 did not work in the applicant's favour at all. As the *dominus litis* party, the applicant should have availed to me a lease whose

contents were/are legible. It should not have attached a document the contents of which made no sense and expected me to make sense out of them. The lease was/is after all, the backbone of its case. It should, therefore, have allowed it to make sense to the decision-maker.

I mention, in passing, that a matter which is not sustainable on a balance of probabilities but which is not so hopeless as to warrant an outright dismissal is, more often than not, struck off the roll. It is struck off the roll because it is fatally defective. The fatal defects which are inherent in it leave the court with no choice but to treat it as such. In doing so, the court will be communicating three very important matters to the applicant for the latter's benefit. These are that:

(i) its case contains fatal defects which must be cured by the applicant before it can be seriously considered and/or,
(ii) the case cannot, owing to other considerations, be dismissed right away and/or
(iii) where the fatal defects have been timeously corrected, the applicant can, within ninety-days which are calculated from the date its application was struck off the roll, reinstate its application for consideration.

The case of the applicant contains fatal defects. It cannot, because of them, see the light of day. The defects leave me with no choice but to strike it off the roll with costs. It is therefore, so ordered.

Chikwengu Law Chambers, applicant's legal practitioners
Mtamangira & Associates, respondent's legal practitioners