REPORTABLE (15)

WONDER MUKWAIRA
v
MINISTER OF LANDS, AGRICULTURE, FISHERIES, WATER & RURAL RESETTLEMENT

THE SUPREME COURT OF ZIMBABWE
GWAUNZA DCJ, MAVANGIRA JA & CHITAKUNYE JA
HARARE: 15 JUNE, 2023 & 15 FEBRUARY, 2024

T. Shadreck, for the appellant

R.B. Madiro, for the respondent

CHITAKUNYE JA: This is an appeal against the whole judgment of the High Court ("the court *a quo*") dated 28 February 2023. In that judgment, the court *a quo* dismissed the appellant's application for review of the respondent's decision to withdraw his offer letter in respect of Subdivision 3 of Ingleborough Farm in Mazowe (the "farm").

FACTUAL BACKGROUND

The appellant was granted an offer letter in respect of the aforementioned farm under the Land Reform and Resettlement Programme (Model A2 Phase II) by the respondent on 25 June 2013. The appellant immediately took occupation of the farm and made improvements on the land. Sometime in February 2015, the appellant received a letter from the Ministry of Defence dated 9 February 2015, instructing him to cease operations on the farm with immediate

effect because the Ministry had found an investor who intended to carry out meaningful operations on the farm.

The letter from the Ministry of Defence was followed up by a notice of intention to withdraw the offer of land from the respondent, dated 10 September 2015. The reason stated therein for the withdrawal was that there had been a double allocation as the farm had been allocated to the Zimbabwe Defence Forces for security reasons. In February 2016 the appellant received another notice of intention to withdraw the offer of land from the respondent. The reason proffered for the withdrawal was that the land had been acquired and handed over to Local Government. In each of the notices of withdrawal the appellant was invited to make representations if he wished. He duly complied but was never favoured with any response save for the fact that no withdrawal was effected till the receipt of another notice of intention to withdraw.

In 2021 the appellant received yet another notice of intention to withdraw the offer of land, dated 29 June 2021, stating that the farm was needed for public purposes. The respondent indicated that the province would find alternative land for the appellant and invited him to make representations on the matter. The appellant duly submitted his written representations as before. In April 2022 the appellant received a letter dated 10 March 2022, stating that the offer for the land was withdrawn. Thereafter, the appellant wrote to the respondent on 20 May 2022 requesting written reasons for the decision to withdraw the offer for the land as none had been disclosed in that letter. The appellant gave the respondent 14 days within which to respond. When the 14-day period lapsed without any response, the appellant filed a court application for review. The application was premised on four grounds namely:

1. The Respondent having withdrawn the offer of land to Applicant through his letter dated 10 March 2022 which was received by the Applicant on 22 April 2022 and having been requested to supply written reasons for his decision to withdraw the offer of land within a reasonable period, failed to do so.

2. Respondent acted unlawfully when he withdrew Applicant's offer of land as he does not have such power or jurisdiction to withdraw an offer of land made to the applicant.

3. Respondent acted in an unfair manner in that after having withdrawn the offer of land made to the Applicant, he did not give applicant any notice of any right of review or appeal he has against respondent's decision to withdraw the offer of land and failed to give applicant the exact time frame within which to vacate the farm.

4. Respondent did not act lawfully in that upon withdrawing applicant's offer of land he did not pay or offer any compensation to the Applicant as required in terms of the law.

As a consequence of the alleged breaches the appellant sought the setting aside of the respondent's decision to withdraw the appellant's offer of land. In the alternative, that the respondent be compelled to supply written reasons for the withdrawal of the appellant's offer of land within 10 days from the date of grant of the order failing which it would be presumed that the respondent's decision constituted an improper exercise of the power conferred on him by the Land Commission Act [*Chapter 20:29*] and his decision of withdrawing the appellant's offer of land be set aside.

In the event that the respondent's letter withdrawing applicant's offer of land is found to be valid, the applicant sought that the respondent be ordered to pay the appellant compensation as may be agreed upon or as may be determined by an arbitrator if parties fail to agree.

The respondent opposed the application. He averred that the withdrawal of the offer of land was valid as the reason thereof was indicated in the notice of intention to withdraw. According to the respondent that sufficed for compliance with s 3 (1) (c) of the Administrative Justice Act [*Chapter 10:23*].

On jurisdiction the respondent asserted that he is the one empowered in terms of s 23 of the Land Commission Act to issue offer letters and *s* 26 thereof empowers the Minister to set terms and conditions for leases of gazetted State land. In this regard the respondent pointed to condition 7 on the offer letter as empowering him to withdraw the offer of land.

On compensation, the respondent contended that no compensation is due upon withdrawal of an offer letter as the respondent is not acquiring land but merely reclaiming what is State land to utilize for public purposes. The respondent, however, conceded that he had not informed the appellant of his right to seek review or to appeal and the time frame for taking such steps as required in terms of s 3 (2) (c) of Act. He, however, contended that the error was not fatal.

PROCEEDINGS BEFORE THE COURT *A QUO*

The appellant's case was that the respondent had acted unlawfully in clear violation of the Administrative Justice Act [*Chapter 10:28*], (the Act), in particular ss 3 and 4 thereof, by failing to provide reasons for the decision to withdraw the offer of land. He argued that the reasons for the withdrawal could not have been made in the notice of intention to withdraw as this was before the actual decision to withdraw had been made.

The appellant also submitted that in terms of the provisions of the Act the respondent had a duty to notify him of his right of review or appeal and a time frame within which to seek the available recourse. He also argued that the respondent ought to have given him a period within which to vacate the land. This the respondent did not do hence violating the provisions of the Act.

The appellant also averred that in terms of the Land Commission Act [*Chapter 20:29*] (the LCA), the respondent had no authority or power to withdraw an offer of land as such power was bestowed on the President only. He further averred that in terms of the LCA, the withdrawal of an offer letter was upon payment of compensation as may be agreed between the parties or may be determined through arbitration.

Based on the above, the appellant sought, *inter alia*, that the withdrawal of his offer letter by the respondent be revoked; alternatively, the respondent be compelled to provide the reasons for his decision.

Per contra, the respondent contended that the offer of land was withdrawn for public purpose. The respondent further averred that the appellant had an opportunity to have the

decision reviewed when he was invited to make representations before the withdrawal of his offer letter. The respondent also averred that no compensation arose from the withdrawal of the offer of land because the respondent was not acquiring the appellant's land but merely reclaiming what was State land.

The respondent's counsel also submitted that there was no need to give the appellant reasons why his offer letter was withdrawn as these had been communicated in the various notices of intention to withdraw prior to the withdrawal. He argued that reiterating the reasons after the withdrawal would amount to redundancy.

Regarding compensation, counsel submitted that compensation was available for land acquisition and improvements made on the land and that the appellant had not made any known effort to seek compensation.

Counsel, however, conceded that the respondent had failed to notify the appellant of his right to seek review or to appeal against the decision to withdraw the offer of land and to state the period within which to so act. He also conceded that no period within which to vacate the land had been given. He, however, submitted that all these omissions were not fatal to the decision made.

FINDINGS OF THE COURT *A QUO*

The court *a quo* held that reasons for the withdrawal of the offer of land had been availed to the appellant through the various notices of intention to withdraw that were addressed to him prior to the letter of withdrawal. The court *a quo* further held that the respondent had

therefore not violated s 3(1) (c) of the Act and that the appellant's assertion that he required reasons for the withdrawal and not for the intention to withdraw did not make any difference as the respondent would be repeating the same reason he gave in the notice of intention to withdraw.

The court *a quo* also held that whilst the appellant was not advised of his rights, in terms of s 3(2) (c) of the Act, to seek review or to appeal against the respondent's decision and the period within which to take such steps, and also the period within which to vacate the land, this non-compliance with s 3(2) (c) was not a fatal irregularity warranting the setting aside of the respondent's decision. The court *a quo* further held that as the appellant did not indicate that he had been prejudiced by the non-compliance and, as the respondent had stated that the irregularity would be addressed administratively, no substantial injustice had been suffered by the appellant.

As regards the respondent's power to withdraw the offer of land, the court *a quo*, relying on s 6 of the Gazetted Land (Consequential Provisions) Act [*Chapter 20:28*] (the GLA) and the definition of acquiring authority therein, held that the respondent had the authority to withdraw the offer letter as he was an acquiring authority in terms of that Act.

In relation to compensation, the court *a quo* found that s 27 of the Land Commission Act relied on by the appellant did not apply to him as this section was for ninety-nine-year leaseholders. The court *a quo* also held that a holder of an offer letter was not covered by the section. Consequently, the court dismissed the application for lack of merit.

Aggrieved by this decision the appellant noted this appeal on the following grounds:

GROUNDS OF APPEAL

1. In dismissing the application for review, the High Court grossly erred and misdirected itself when it found that there was no need for the respondent to supply appellant with written reasons after withdrawing his offer letter as such reasons had already been supplied by the respondent in his notice of intention to withdraw the offer letter, a finding which is contrary to the provisions of section 3 (1) (c) of the Administrative Justice Act [*Chapter 10:28*].

2. The court *a quo* also erred and misdirected itself when it relied on section 6 of the Gazetted Land (Consequential Provisions) Act [*Chapter 20:29*] to find that respondent had authority to withdraw appellant's offer letter yet that section relates to the validation of offer letters issued on or before the fixed date that are not withdrawn and is not applicable to the appellant's offer letter as it was issued way after the fixed date referred to in that provision.

3. The court *a quo* further erred and misdirected itself in that it did not make any finding whatsoever on the issue which was placed before it that in terms of section 27 of the Land Commission Act [*Chapter 20:29*], only the President of Zimbabwe may withdraw an offer letter and not the respondent.

4. The court *a quo* also erred and misdirected itself when it found that appellant was not entitled to compensation in terms of section 27 of the Land Commission Act [*Chapter*

20:29] when in fact he qualifies for and is entitled to compensation in terms of that section of the Act.

The appellant sought that the appeal be allowed with costs and that:

(i) The respondent's decision to withdraw his offer of land be set aside.

(ii) Alternatively, that the respondent be ordered to supply written reasons for the withdrawal of the appellant's offer of land within 10 days of the date of the court's order failing which it shall be presumed that the respondent constituted an improper exercise of the power conferred to him by the Land Commission Act and his decision of withdrawing applicant's offer of land shall be set aside.

(iii) That if the withdrawal of the applicant's offer of land is found to be valid, the respondent be ordered to pay compensation for the withdrawal as may be agreed upon or as may be determined by an arbitrator if parties fail to agree.

SUBMISSIONS BEFORE THIS COURT

At the hearing of this appeal, Mr *Shadreck*, for the appellant, submitted that the court *a quo* erred when it dismissed the application for review. Counsel submitted that the finding by the court *a quo* that the reasons provided in the notice of intention to withdraw the offer of land were sufficient, was contrary to s 3 (1) (c) of the Act. He argued that as the respondent had invited the appellant to make representations, he had an obligation to provide reasons for the withdrawal of the offer letter as required by the Act upon considering the representations made.

Counsel also submitted that the court *a quo* erred when it relied on s 6 of the Gazetted Land Act in finding that the respondent had the requisite authority to withdraw an offer

letter. He further submitted that it was irregular for the court *a quo* not to make a pronouncement on whether or not the respondent had the authority to withdraw an offer of land in terms of s 27 of the LCA. He added that the court *a quo* also fell into error when it did not make a finding that the appellant was entitled to compensation in terms of s 27 as the respondent was a grantee.

Per contra, Ms *Madiro*, for the respondent, submitted that the appellant ought to have made an application compelling the respondent to avail reasons for the withdrawal of the offer letter. She submitted that the offer letter had a condition that the respondent could withdraw it, thus the appellant was bound by those terms. Counsel further submitted that the court *a quo*'s finding that the respondent had the authority to withdraw the offer of land meant that it had dealt with the application of s 27 of the LCA. In relation to the issue of compensation, counsel submitted that it had offered the appellant alternative land and that if the appellant required compensation for the improvements he effected on the land, he should have applied for same.

From the grounds of appeal and submissions made, two issues arise for determination. These are:

1. Whether the court *a quo* erred and misdirected itself in holding that the reasons contained in the notice of intention to withdraw constitute sufficient compliance with section 3 (1) (c) of the Act.

2. Whether the court *a quo* erred and misdirected itself in holding that the respondent had the authority to withdraw the offer of land.

THE LAW

The appellant's case is that the court *a quo* erred by finding that the respondent did not have to provide reasons for withdrawing the offer of land as these reasons had already been communicated in the notice of intention to withdraw the offer letter.

Section 3 of the Act, whose compliance is in issue, provides, *inter alia*, that:

"3 **Duty of administrative authority**

(1) An administrative authority which has the responsibility or power to take any administrative action which may affect the rights, interests or legitimate expectations of any person shall—

(a) act lawfully, reasonably and in a fair manner; and

(b) act within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to take the action by the person concerned; and

(c) where it has taken the action, supply written reasons therefor within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to supply reasons by the person concerned." (my emphasis)

The right to be provided with reasons for administrative action taken is entrenched in s 68 of the Constitution of Zimbabwe, 2013, in these terms:

"**68 Right to administrative justice**

(1) Every person has a right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair.

(2) Any person whose right, freedom, interest or legitimate expectation has been adversely affected by administrative conduct has the right to be given promptly and in writing the reasons for the conduct." (my emphasis)

In the circumstances, the import of s 3 (1) (c) is that after administrative action is taken, the administrative authority must provide reasons for the action within a period specified

by law or when such reasons are requested. It does not state that the reasons proffered prior to the action being taken shall suffice. What is required before the action is taken is to inform the person to be affected of the proposed action and to invite representations in respect thereof. In this regard s 3 (2) of the Act provides that:

> "(2) In order for an administrative action to be taken in a fair manner as required by paragraph (a) of subsection (1), an administrative authority shall give a person referred to in subsection (1) -
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> (a) adequate notice of the nature and purpose of the proposed action; and
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> (b) a reasonable opportunity to make adequate representations; and
>
> (c) adequate notice of any right of review or appeal where applicable." (my emphasis)

It is clear that for both substantive and procedural fairness to be attained a person to be adversely affected must be notified of the intended action, be invited to make representation and, once the action or decision has been made, to be given reasons for the action or decision. The affected person must be informed of his /her right to seek review or to appeal within a period stipulated by the applicable law or within a reasonable time if none is stipulated.

The golden rule of interpretation is that in the absence of any ambiguity or absurdity, the language used in a statute should be given its primary, ordinary meaning. This was aptly stated in *Chegutu Municipality* v *Manyora* 1996(1) ZLR 262 (S) at 264 D-E:

> "There is no magic about interpretation. Words must be taken in their context. The grammatical and ordinary sense of the words is to be adhered to, as Lord Wensleydale said in *Grey v Pearson* (1857) 10 ER 1216 at 1234, —unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further."

In *casu*, the ordinary meaning of the words in s 3 (1) (c) is that reasons must be furnished within a given time or after a request has been made after such action or decision has been taken. This becomes crystal clear when one has regard to the scope and object of the Act as a whole. The preamble to the Act states that one of its purposes is to "provide for the entitlement to written reasons for administrative action or decisions". Written reasons must therefore be furnished as stipulated by the law or when they are requested by a person who is adversely affected by the administrative action.

The requirement to provide reasons following administrative action is a fundamental feature of good and efficient public administration. It enables administrative authorities to be accountable for their actions and prevents the administrative authorities from arbitrariness and unduly prejudicing the rights, interests and legitimate expectations of persons without having to explain their conduct. In *Paridzira v Minister of Lands & Rural Resettlement & Anor* HH 376 -15 on p 3 ZHOU J aptly underscored this in these words:

> "The entrenchment of a comprehensive and justiciable fundamental right to lawful, efficient, reasonable, proportionate, impartial and fair administrative conduct in the Constitution is a celebrated device to control abuse of governmental power in order to guard against executive autocracy. See Ian Currie and Johan de Waal, *Bill of Rights Handbook* 5th Ed., p. 642."

ANALYSIS

1. **Whether the court *a quo* erred and misdirected itself in holding that the reasons contained in the notice of intention to withdraw constitute sufficient compliance with s 3 (1) (c) of the Act.**

It is common cause that the appellant made representations against the intention to withdraw his offer letter. He had legitimate expectations that his representations would be

considered. It was therefore incumbent upon the respondent to furnish reasons for the decision made in the light of the representations made against such proposed action. This was a legitimate expectation on the appellant's part. The reasons so provided would form a basis for the appellant in deciding on the appropriate course of action to take.

The court *a quo's* finding that the reasons contained in the notices of intention to withdraw the offer of land were sufficient compliance with s 3 (1) (c) of the Act, is contrary to the purpose and objective of requiring reasons to be furnished. It is akin to putting the cart before the horse. The notice of intention to withdraw served to inform the appellant of the nature and purpose for the intended action and invited the appellant to make representations premised on those grounds.

As alluded to above, the notices were given in compliance with s 3 (2) (a) and (b) to enable the appellant to make representations as invited. It is clear from these subsections that the notice of the nature and purpose of the pending administrative action should be communicated to the person whose rights are to be adversely affected before such action is taken. This is intended to ensure that the person is given the opportunity to be heard, as is in tandem with the *audi alteram partem* rule, before a decision adverse to their rights and interests is taken.

In the circumstances the notice given in terms of s 3 (2) (a) cannot be said to constitute the reasons envisaged under s 3(1) (c) of the Act. In any case the reference to the reasons in the notice as being sufficient was only alluded to in response to this litigation.

In *Chiba & Ors v Commander – Zimbabwe Defence Forces & Anor* HH 698-21 at p 8, the Court held that:

> "I also want to look at the failure to provide reasons which has been admitted by the 1st respondent…… To say that reasons were not given but are contained in the opposing affidavit before a court of law does not satisfy the constitutional requirement. The Constitution anticipates the giving of reasons when requested and not in the context of litigation. Such reasons apart from justifying the decision taken, also enable the affected person to decide whether or not the litigation route should be embarked upon." (my emphasis)

This Court holds the view that s 3 (1) (c) of the Act, as read with s 68 (2) of the Constitution, demands that reasons be furnished in the wake of administrative action. Thus, the respondent's contention that reasons for the withdrawal of the offer of land were sufficiently furnished in the notice of intention to withdraw is, therefore, devoid of merit.

It is trite that where the word 'shall' is used it denotes a mandatory requirement. Thus, the use of the word "shall" in s 3 (1) (c) is imperative – it denotes that the section is peremptory, and thus compliance with its provisions is mandatory.

In *Tamanikwa & Anor v Zimbabwe Manpower Development Fund* SC 73/17 at p 7, whilst dealing with the issue of none compliance with a peremptory provision, this court reaffirmed the position in these words:

> "It is settled law that save in exceptional circumstances, the term 'shall', denotes the law maker's intention to render the rule mandatory. This Court has ruled on numerous occasions that failure to comply with mandatory provisions of the Rules of court will render an appeal a nullity".

In *casu*, the requirement to provide reasons after the making of a decision is couched in peremptory terms. It must therefore be complied with without fail. The respondent

was thus required to provide reasons for withdrawing the offer of land when such reasons were requested. The respondent did not base his failure to provide reasons on *s* 3 (3) or *s* 8 of the Act which provide specific instances where a departure from provisions of s 3 (1) and (2) may be allowed. He simply chose not to respond and consequently fell short of the requirements of s 3 (1) (c) of the Act. Clearly the court *a quo* erred and misdirected itself in holding that the respondent was compliant. The first ground of appeal is thus upheld.

The next question relates to the consequences of such non-compliance and the appropriate relief in the circumstances.

In *S v Gatsi*; *S v Rufaro Hotel (Pvt) (Ltd)* t/a *Rufaro Buses* 1994 (1) ZLR 7 (H) at p 28-29, the court aptly stated that:

> "Where a statute requires that something be done without stating the consequence of non-compliance with the provision, the normal course followed in order to determine the consequence is to ascertain whether the provision concerned is peremptory or merely directory. If it is peremptory, then the act is a nullity; if it is directory, then the act has legal effect despite the non-observance of the provisions of the statute. In *Lion Match Co v Wessels* 1946 OPD 376 van den Heever J (as he then was) pointed out that the expressions "peremptory" and "directory", as applied to statutory provisions, are unfortunate ones, as the court is concerned not with the quality of the command but with unexpressed consequences following from it, as presumed to have been intended by the Legislature. …… Whatever terminology is used, however, and whatever label is given to the test, it does not affect the nature of the inquiry which the court is called on to make in order to attempt to ascertain the intention of the Legislature."

In *Shumba & Anor v The Zimbabwe Electoral Commission & Anor* 2008 (2) ZLR 65 (S) at 81D-E, this Court alluded to guidelines to be followed in ascertaining the intention of the legislature regarding non-compliance with peremptory provisions of the law. The Court held that:

> "One of those guiding principles is the possible consequences of a particular interpretation. If interpreting non-compliance with a statutory provision leads to consequences totally disproportionate to the mischief intended to be remedied, the presumption is that Parliament did not intend such a consequence and therefore the provision is directory."

In *casu*, the mischief intended to be remedied by s 3 (1) (c) of the Act is the scenario where administrative authorities are not accountable for the decisions that they make that may adversely affect the rights of other persons. The court views the respondent's non-compliance with the peremptory provisions of s 3 (1) (c) as being against one of the objectives of the Act as a whole. In these circumstances, it is justified that the non-compliance be regarded as fatal and court may resort to any of the reliefs provided by the Act it considers appropriate in the circumstances.

Section 4 of the Act provides the reliefs a court may grant to an aggrieved party for breach of s 3 of the Act. The reliefs, in tandem with what the appellant sought, are provided in s 4 (2) (a), (d) and (e) as follows:

> "(2) Upon an application being made to it in terms of subsection (1), the High Court may, as may be appropriate—
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> (a) confirm or set aside the decision concerned;
>
> (b) ……
>
> (c) ……
>
> (d) direct the administrative authority to supply reasons for its administrative action within the relevant period specified by law or, if no such period is specified, within a period fixed by the High Court;
>
> (e) give such directions as the High Court may consider necessary or desirable to achieve compliance by the administrative authority with section three."

It is apparent from s 4 (2) that besides ss (a), on confirming or setting aside the decision, the underlying desire is for the administrative authority to be compelled to comply with the law. The alternative relief of compelling the respondent to provide the reasons for its decision would be most appropriate in the circumstances of this case. A reasonable period within which to provide the reasons ought to be provided.

2. Whether or not the court *a quo* erred and misdirected itself in holding that the respondent had the authority to withdraw the offer of land.

The court *a quo* held that in terms of s 6 of the Gazetted Land (Consequential Provisions) Act, (the GLA) the respondent had the authority to withdraw the offer letter as he was an acquiring authority. Central to this issue is the power of the Minister in respect of land allocated to beneficiaries.

The said section provides that:

> "**6. Validation of offer letters issued on or before the fixed date**
> Any offer letter issued on or before the fixed date that is not withdrawn by the acquiring authority is hereby validated."

Section 2 of the GLA defines acquiring authority as the President or any Minister duly authorized by the President, acting in terms of ss (1) and (2) of s 3 of the GLA. A reading of *s* 6 of the GLA shows that the respondent, as the acquiring authority, could withdraw an offer letter issued on or before the fixed date. Though it does not expressly state the provision in terms of which such withdrawal was to be effected, it nevertheless points to a power to withdraw the offer letter reposed in the acquiring authority. The appellant's contention is that s 6 of the GLA does not apply to his offer letter that was issued on 25 June 2013 as it was issued after the fixed date, 20 December 2006.

The law in terms of which land may be acquired by the State is primarily the Constitution and the Land Acquisition Act [*Chapter 20:10*].

Section 3 of the Land Acquisition Act (the LAA) provides that:

"**3. Acquisition of land by President**

(1) Subject to this Act, the President, or any Minister duly authorised by the President for that purpose, may compulsorily acquire—

(a) any land, where the acquisition is reasonably necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the utilization of that or any other property for a purpose beneficial to the public generally or to any section of the public;

(b) any rural land, where the acquisition is reasonably necessary for the utilization of that or any other land—

(i) for settlement for agricultural or other purposes; or

(ii) for purposes of land reorganization, forestry, environmental conservation or the utilization of wild life or other natural resources; or

(iii) for the relocation of persons dispossessed in consequence of the utilization of land for a purpose referred to in subparagraph (i) or (ii)." (my emphasis)

Once such land has been acquired it becomes State land. The acquiring authority is empowered to alienate such land in terms of the law. In this regard s 17 of the LCA provides that:

"17 Lease or other alienation of State Land

(1) The Minister may, after consultation with the Commission and with the approval of the President, lease, sell or otherwise dispose of State land for such purposes and subject to such conditions as he or she may determine.

(2) Land may be leased or alienated to a single individual, a single corporate body, a single household or to two or more persons jointly." (my emphasis)

The Minister is thus empowered to lease, sell or otherwise dispose of the State land subject to such conditions as he or she may determine. The term 'otherwise dispose' entails other ways in which the Minister is lawfully empowered to dispose State land including alienate. The term alienate is defined in s 2 as:

> "alienate", in relation to agricultural land that is State land, includes to issue a ninety-nine-year lease, lease with a purchase option, permit, offer letter or deed of grant to a person."

Further s 23 of the LCA provides that:

> "The Minister may, subject to section 17, issue offer letters, leases, deeds of grant and permits in respect of Gazetted or other State land."

Section 26 of the LCA, which the respondent also referred to, provides that:

> "Where the Minister leases a holding or portion of Gazetted or other State land to an applicant, such lease, subject to this Act shall—
>
> (a) be on such terms and conditions as may be fixed by the Minister;
>
> (b) not contain an option to purchase the land to which it relates if the land in question is Gazetted land." (my emphasis)

It is apparent from the above provisions that the respondent has the power to issue offer letters on such conditions as he or she may determine. The respondent's contention was that he issued the appellant an offer letter with stated conditions. One of those conditions was condition 7 which empowered him to withdraw the offer of land as he did. The withdrawal was not in terms of s 27 of the LCA as that is exercised by the President.

In *Sigudu v Minister of Lands & Rural Resettlement & Anor* HH 11/13 at 6 PATEL J (as he then was) faced with a similar issue of the Minister's authority to withdraw an offer of land, after a consideration of the GLA and the Constitutional provisions related thereto, remarked:

> "Section 6 of the Act validates any offer letter issued on or before the fixed date (*i.e.* the date of commencement of the Act) that is not withdrawn by the acquiring authority.
> The object of all of these provisions is quite clear. It is to endow the holder of a valid offer letter with the requisite lawful authority to hold, use and occupy Gazetted land and thereby shield him or her from being prosecuted, convicted and evicted under section 3 of the Act. Beyond this, the Act does not provide for the actual allocation or settlement of Gazetted Land, whether by offer letter, permit or lease. Nor does it provide for the cancellation or withdrawal of any such offer letter, permit or lease.
>
> It follows from all of the foregoing that there is no proper statutory basis for the creation or termination of rights granted by offer letters in general. Their basis is essentially administrative and their existence or otherwise is consequently subject to purely administrative rules and discretion – which must, of course, be exercised lawfully, reasonably and fairly, but which are unavoidably open to the possibility of abuse and malpractice. (This is precisely what appears to have happened in this case).
>
> I am constrained to add that this is not an entirely satisfactory basis for the implementation of the Land Reform Programme generally." (my emphasis)

Section 27 of the LCA, which the appellant sought to rely on, expressly states that the President may "retake possession of land alienated in terms of this Act". This section relates to powers given to the President and not to the Minister. The section authorizes the President to retake land that would have been alienated for the State.

It is trite to note that the respondent does not claim to have withdrawn the appellant's offer letter in terms of s 27 but by virtue of a condition in the offer letter which appellant was aware of and had accepted. The said condition states that:

> "The Minister reserves the right to withdraw or change this offer if he deems it necessary, or if you are found in breach of any set conditions. In the event of a withdrawal or change

of this offer, no compensation arising from this offer shall be claimable or payable whatsoever."

The appellant did not seek to impugn the condition in question. Clearly having accepted that condition appellant cannot seek to ignore it and instead seek to challenge the withdrawal of the offer letter on a section relating to the powers of the President and not the respondent. He ought to have addressed the issue of whether in terms of the offer made to him and his acceptance thereof, the respondent had no authority to withdrawal the offer of land and whether such an act is provided for in terms of the law under which the offer and acceptance were made. I am mindful of the fact that there are other conditions on the offer letter some of which could lead to the respondent withdrawing the offer letter. The unsavoury position is that all these conditions are determined and enforced by the Minister. These are the administrative rules and discretion PATEL J (as he then was) alluded to in the *Sigudu* case (*supra*). The provisions in this regard need legislative intervention. The power given to the Minister to fix conditions as he /she may determine is so wide as to create room for unbridled abuse of power. As in this case, after giving different grounds for seeking to withdraw the offer letter over many years, the respondent simply hid behind the condition and refused to give reasons for his eventual decision. It is such exercise of administrative authority that s 68 of the Constitution and s 3 of the Act are intended to curtail. The need to exercise such administrative authority lawfully, reasonably and fairly cannot be overemphasised.

In the circumstances, this Court holds that, premised on the fact that the withdrawal was based on a condition to which the appellant had accepted, the court *a quo* may not be held to have so misdirected itself as to warrant this court's interference on this aspect.

The court therefore finds merit in ground of appeal number one but no merit in the second and third grounds of appeal. Consequently, we are of the view that it is not necessary to determine the issue of whether the appellant was entitled to compensation at this juncture as respondent must provide reasons for his decision taking into account the appellant's representations. The court is of the view that a period of 21 days is reasonable for the respondent to provide the reasons.

DISPOSITION

In light of the foregoing analysis, the court finds that the decision of the court *a quo* cannot stand as the respondent must provide reasons for his decision. As for costs, we find no justification to depart from the norm that costs follow the cause.

Accordingly, it is hereby ordered that:

"1. The appeal be and is hereby allowed with costs.

2. The judgment of the court *a quo* is hereby set aside and substituted with the following:

> "The respondent shall supply written reasons for the withdrawal of the applicant's offer of land within twenty-one (21) days from the date of grant of this order failing which it shall be presumed that the decision to withdraw the offer of land constituted an improper exercise of the power conferred on him by the Land Commission Act, [chapter 20:29] and his decision, dated 10 March 2022, withdrawing the applicant's offer of land shall stand as set aside."

GWAUNZA DCJ : I agree

MAVANGIRA JA : I agree

J. Mambara & Partners, appellant's legal practitioners

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