

CHRISTOPHER RUKAWO  
versus  
MINISTER OF LANDS, AGRICULTURE, FISHERIES, WATER, AND RURAL  
DEVELOPMENT

HIGH COURT OF ZIMBABWE  
**MAMBARA J**  
HARARE; 23 AUGUST 2024

### **Opposed Application**

*T. Magwaliba* with *K Mabaudi* for the applicant  
*C Chibidi* for the respondent

MAMBARA J: At the commencement of the hearing of this application the respondent made an oral application for condonation for late filing of the notice of opposition and at the same time an application for upliftment of the bar operating against it for late filing of its heads of argument. Both applications were not opposed and I duly granted them.

The applicant was allocated Subdivision 8 of Oldham Farm, Chegutu District, Mashonaland West Province, by way of an offer letter dated 6 March 2007. The farm, measuring 1373 hectares, was offered to the applicant under the Land Reform and Resettlement Programme, Model A2 Phase II. Upon acceptance of the offer, the applicant took occupation of the land and commenced agricultural operations.

Over the years, the applicant made significant investments in developing the farm. These developments included the construction of six permanent dwelling houses for farm workers, the installation of a 50KVA generator, the construction of a 4km power line at a cost of USD 140,000, and the purchase of a 200KVA transformer. The farm was further developed with the fencing of paddocks, the establishment of a cattle ranching operation with 550 head of cattle, and the acquisition of farm equipment, including a tractor and a hay baler worth USD 84,000.

On 7 April 2022, the applicant received a letter from the respondent indicating an intention to withdraw the offer letter. The reason given for this intended withdrawal was “replanning” and the applicant was given seven days to make representations. The applicant, in compliance with the directive, submitted a detailed response outlining the extensive developments made on the farm and the active agricultural operations being conducted.

Despite these representations, on 6 June 2022, the respondent issued a letter formally withdrawing the offer letter. The withdrawal was based on the same reason of “replanning”. However, the respondent did not provide detailed reasons or any indication that the applicant's representations had been considered. Additionally, there was no offer of alternative land to the applicant.

The applicant, feeling aggrieved by this decision, initiated this application, seeking an order from this Court to set aside the respondent's decision. The applicant contends that the withdrawal of the offer letter was not only procedurally flawed but also substantively unreasonable, given the significant investments made on the farm and the lack of any substantive reason provided by the respondent.

The respondent, in opposition, maintains that the decision to withdraw the offer letter was made in accordance with the law and that the notice given to the applicant was adequate. The respondent further argues that the applicant's utilization of the farm was not in line with the expectations set out in the offer letter, thereby justifying the withdrawal.

The applicant argues that the withdrawal of the offer letter was procedurally flawed, as it did not comply with the requirements of the Administrative Justice Act [*Chapter 10:28*]. Specifically, the applicant contends that the notice provided was inadequate, and the respondent failed to give proper consideration to the representations made. The respondent, on the other hand, asserts that due process was followed and that the notice period and the reasons provided were sufficient.

Procedural fairness is a fundamental principle in administrative law, requiring that decisions affecting the rights or interests of individuals must be made following fair procedures. In this case, the respondent issued a notice of intention to withdraw the offer letter, giving the applicant seven days to make representations. The applicant complied with this directive, submitting detailed representations that outlined the extensive developments and farming activities undertaken on the land.

The applicant contends that the seven-day notice period, while brief, might have been considered sufficient under certain circumstances. However, given the complexity and significance of his investments and operations on the farm, the respondent should have allowed a longer period to ensure that the applicant could adequately prepare and submit comprehensive representations.

Moreover, procedural fairness requires that the decision-maker genuinely considers the representations made by the affected party. The applicant submitted a detailed farming program

and evidence of substantial investments in response to the notice of intention to withdraw the offer letter. However, the respondent's final decision to withdraw the offer letter did not reference or address these representations in any meaningful way.

The failure to consider the applicant's representations or to provide any substantive response to them indicates a lack of genuine engagement with the applicant, so the argument went. This failure constitutes a significant procedural irregularity, rendering the decision procedurally unfair.

The respondent cited "replanning" as the reason for the withdrawal of the offer letter. The applicant contends that this reason was vague and inadequate, failing to provide any specific justification for why the offer letter was being withdrawn, especially after significant developments had been made on the land.

Under the Administrative Justice Act administrative decisions must be supported by reasons that are clear, specific, and communicated to the affected party. The requirement to provide reasons serves several purposes: it ensures transparency, allows the affected party to understand the basis of the decision, and enables them to challenge the decision if they believe it to be unjust.

In this case, the term "replanning" is broad and ambiguous. It does not provide the applicant with any concrete information about why the decision was made or how the replanning process necessitates the withdrawal of the offer letter. The lack of specificity in the reason given by the respondent is insufficient to meet the standards of administrative fairness required by law.

The seven-day notice period provided to the applicant to make representations was brief. While the respondent argues that this period was standard, the context and complexity of the applicant's situation should have warranted a longer period to allow for a thorough and meaningful response.

The Court acknowledges that the adequacy of a notice period depends on the circumstances of each case. In situations involving significant investments, complex operations, or detailed representations, a longer notice period may be necessary to ensure procedural fairness.

The applicant submitted detailed representations, including evidence of substantial investments in the farm, the development of infrastructure, and the implementation of a comprehensive farming plan. These representations were crucial to the applicant's case, as they demonstrated the extent of the applicant's commitment to and reliance on the offer letter.

However, the respondent's final decision to withdraw the offer letter did not acknowledge or address these representations. The failure to consider the applicant's submissions indicates a disregard for the principles of natural justice and the requirements of procedural fairness. This omission undermines the legality and fairness of the decision.

The applicant invested significantly in the farm, including the construction of housing, installation of infrastructure, and development of agricultural operations. These investments were made in reliance on the offer letter and with the expectation of long-term occupation and use of the land.

The respondent's decision to withdraw the offer letter, based solely on the vague reason of "replanning" does not appear to take into account the substantial investments made by the applicant or the long-term nature of the applicant's occupation of the land. The decision, therefore, appears to be disproportionate and unreasonable, given the circumstances.

The decision to withdraw the offer letter without offering any form of compensation, alternative land, or consideration of the applicant's substantial investments is not justifiable. The respondent's actions were arbitrary and lacked the necessary balance between administrative discretion and the protection of individual rights.

The principle of audi alteram partem, which translates to "hear the other side" is a fundamental element of procedural fairness. It requires that any person who is subject to a decision that affects their rights or interests must be given a fair opportunity to present their case before the decision is made. This principle is enshrined in both the Administrative Justice Act and the Constitution of Zimbabwe.

In the case of *Masunda v Minister of State for Land and Anor* 2006 (2) ZLR 72 (H), the High Court emphasized the necessity of this principle in administrative decisions, particularly those involving the withdrawal of offer letters under the land reform program. The court noted that it is "*basic administrative procedure that before one takes a decision that adversely affects another, the affected individual must be given an opportunity to be heard*".

The *Muwoni v Rodgers Brothers and Son (Pvt) Ltd & Ors* 2018 (2) ZLR 340 (H) case further reinforces this requirement. In that case, the court highlighted that once an offer letter is issued, it cannot be withdrawn without following the audi alteram partem rule. This ensures that the affected party has a genuine opportunity to present their side of the story before any adverse decision is taken.

The court in *Paradzira v Minister of Lands and Anor* HH 376/15 held that procedural fairness entails not just the opportunity to make representations, but also that these

representations must be given due consideration by the decision-maker. The failure to consider the applicant's submissions seriously undermines the procedural fairness of the decision-making process.

In this case, the evidence suggests that the respondent did not adequately consider the applicant's detailed representations before making the final decision to withdraw the offer letter. The respondent's letter made no reference to the applicant's submissions, raising serious concerns about the fairness and transparency of the process.

The requirement to provide reasons for an administrative decision is a crucial aspect of procedural fairness. It allows the affected party to understand the basis of the decision and provides a basis for challenging the decision if it is believed to be unjust.

In *Kazingizi v Dzinoruma* 2006 (2) ZLR 217 (H), the court underscored the importance of giving reasons for decisions, particularly in the context of judicial and administrative proceedings. The court stated that providing reasons is a "compulsive imperative" that fulfils the legitimate expectations of litigants and informs them of the facts and arguments used as the basis for the decision.

The Supreme Court in *Gwarazimba N.O v Gurta AG* 2015 (1) ZLR 402 (S) further elaborated on this principle, noting that failure to communicate the reasons for a decision to the affected party constitutes a significant procedural irregularity. The court wrote, "*In casu it is evident that the appellant, who must have reasons for not acting on the request made to him by the respondent chose not to commit them to paper nor communicate to the latter. The reasons therefore remained "stored" in his mind*". The court in that case emphasized that reasons for administrative decisions must be documented and communicated to ensure transparency and accountability.

In the present case, the respondent cited "replanning" as the reason for the withdrawal of the offer letter. However, this reason was not further elaborated upon, nor was it contextualized in relation to the applicant's specific situation. The term "replanning" is vague and does not provide the applicant with sufficient information to understand the rationale behind the decision.

The adequacy of the notice period provided to the applicant is another critical aspect of procedural fairness. The adequacy of notice must be assessed in the context of the specific circumstances of each case. In *Hama v National Railways of Zimbabwe* 1996 (1) ZLR 664, the court held that decisions must be reasonable and proportionate, considering the specific facts and the impact on the affected party.

In this case, the seven-day period may be considered too brief, given the significant investments and the ongoing agricultural activities on the farm. The applicant was required to respond within a limited timeframe, which may have constrained their ability to present a comprehensive and well-supported case.

The failure to consider the applicant's representations is a significant procedural flaw that undermines the legality of the respondent's decision. The court in *Gwarazimba N.O v Gurta* AG 2015 (1) ZLR 402 (S) further highlighted that administrative authorities must take action based on informed and reasoned decisions, particularly when they affect the rights and interests of individuals.

The final issue for determination is whether the decision to withdraw the offer letter was substantively reasonable, given the applicant's significant investments and long-term occupation of the land.

The court in *Hama v National Railways of Zimbabwe* 1996 (1) ZLR 664 established that an administrative decision must be not only be procedurally fair but also substantively reasonable. This means that the decision must be proportionate, taking into account the impact on the affected party and balancing it against the objectives of the administrative authority.

In this case, the respondent's decision to withdraw the offer letter, based solely on the vague reason of "replanning" appears to be disproportionate and unreasonable. The decision does not consider the substantial investments made by the applicant or the long-term nature of the applicant's occupation and use of the land.

The court finds that the decision was arbitrary and lacked the necessary balance between the respondent's administrative objectives and the applicant's rights and interests. The respondent's failure to offer any form of compensation or alternative land further underscores the unreasonableness of the decision.

The court, therefore, concludes that the decision to withdraw the offer letter was substantively unreasonable and should be set aside.

After careful consideration of the submissions made by both parties, the relevant legal principles, and the facts established in this case, the Court finds that the respondent's decision to withdraw the applicant's offer letter was both procedurally and substantively flawed.

The decision-making process was marred by a lack of genuine consideration of the applicant's representations, inadequate notice, and a failure to provide sufficient and specific reasons for the withdrawal. These deficiencies violate the principles of natural justice and the

requirements for lawful, reasonable, and fair administrative conduct as stipulated in the Administrative Justice Act.

Furthermore, the respondent's decision was substantively unreasonable, given the significant investments made by the applicant and the long-term occupation of the land. The vague justification of "replanning" does not provide a sufficient basis for such a drastic measure as withdrawing an offer letter, especially in the absence of any compensation or alternative arrangements for the applicant.

In light of these findings, the Court concludes that the respondent's decision to withdraw the offer letter should be set aside, and the relief sought by the applicant should be granted. In the result, it is ordered as follows:

1. The decision of the respondent to withdraw the applicant's offer letter dated 6 March 2007, in respect of Subdivision 8 of Oldham in the District of Chegutu, Mashonaland West Province, measuring 1373 hectares, is hereby set aside.
2. The offer letter dated 6 March 2007, in respect of Subdivision 8 of Oldham in the District of Chegutu, Mashonaland West Province, measuring 1373 hectares, is declared valid and effectual.
3. The applicant shall remain in occupation of the property referred to above in accordance with the terms of the offer letter.
4. The respondent shall pay the costs.

**MAMBARA J:**.....

*Hove and Associates*, applicant's legal practitioners  
*Civil Division*, for the respondent.