

THE APOSTOLIC CHURCH OF OREGON
versus
UMGUZA RURAL DISTRICT COUNCIL

IN THE HIGH COURT OF ZIMBABWE
TAKUVA J
BULAWAYO, 15 February & 5 October 2023

Opposed Application

T Dube, for the applicant
S Chamunorwa, for the respondent

TAKUVA J: This is a court application in terms of ss 3(1) and 4(1) of the Administrative Justice Act [*Chapter 10:28*]

Applicant seeks the following relief;

- “1. Respondent is directed to make a written decision and provide reasons regarding applicant’s application for an allotment of land, namely proposed church stand for Apostolic Mission in Khaisa line, Ntabazinduna, Umguza Rural District Council Ward 6, registration number 124, receipt number 140907 within (14) fourteen days of granting of this order.
2. Respondent to pay costs of suit on an attorney client scale should they oppose this application.”

Facts

Sometime in March 2017, the applicant made a written application to the respondent for allocation of a church stand in ward 6 Ntabazinduna Communal Lands. The application for a church was endorsed by the Chief and Headman for the area. Site plans of the proposed church stand were prepared by the Department of Physical Planning of the respondent on 22 October, 2020. The proposed stand is known as stand 100.

In June 2020, applicant’s legal practitioner wrote to enquire as to the progress of the stand. Applicant did not receive a response prompting it to write to the respondent on 7th day of July 2020. Still no response was received from the respondent. Numerous phone calls were

made by applicant's legal practitioners including a follow up letter dated 25 August 2020. Again, no response was forthcoming from the respondent.

On 21 October 2020, respondent advised applicant that it was still processing the application for a church stand and applicant would be advised accordingly of the outcome. On 19th November 2020 applicant wrote to the respondent making a follow up enquiry on the outcome. Respondent did not respond and up to date no decision regarding applicant's application for a church stand has been made. Throughout this period, applicant has been paying annual renewal fee for the stand. The last payment was in July 2021.

Applicant's case

Based on the above facts all that applicant desires is that respondent make a decision on its application for a church stand. It denied the respondent made a decision at one point but applicant declined to accept it. The applicant explained how stand number 100 was allocated. This number came about when the site plans of the proposed church stand were prepared by the respondent on 22 October 2020. It is on the plan that the stand is known as "stand 100". Before submitting its application to the respondent applicant took it to the local Chief Ndiweni and his Headman. Further, applicant contended that respondent has a duty as an administrative authority to act lawfully, reasonably and in a fair manner. The respondent should have processed applicant's request for land within a reasonable time in accordance with the Administrative Justice Act and the Constitution.

Respondent's case

It is not being denied by respondent that applicant submitted an application for land at its offices. According to the respondent applicant did not apply for a "church stand" but for a "commercial stand" as is clearly depicted on the application form as "Commercial stand application form". Respondent claims that it responded by offering a piece of land which applicant refused and elected to remain on the waiting list. For this reason, respondent contended that there is no cause of action for the relief that is being sought as the order that is being sought is not for the respondent to deal with a general application for land but rather a specific application for a stand mentioned in the draft order. Respondent submitted that the applicant is trying to fashion a new cause of action via heads of argument which is different from the one that is stated in its founding affidavit. The court should confine itself to the issues

pleaded by the parties – see *Makgatho v Old Mutual Life Assurance Co. Zim (Ltd)* 2015 (2) ZLR 5 (S).

The respondent prayed for the dismissal of the application with punitive costs.

Issue

Whether or not respondent has made a decision on applicant's application for allocation of land within respondent's jurisdiction.

The law

Section 68 of the Constitution of Zimbabwe provides;

- “(1) Every person has a right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, in partial 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.”

On the other hand section 3 of the Administrative Justice Act [*Chapter 10:28*]

“3. Duty of Administrative authority

- 3(1) An administrative authority which has the responsibility or power to take any administrative action which may affect the rights, interest 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.

4. Relief against administrative authorities

- (1) subject to this Act and any other law, any person who is aggrieved by the failure of an administrative authority to comply with section three may apply to the High Court for relief.”

Application of the law to the facts

It is common cause that applicant submitted an application to the respondent, what seems to be disputed is the nature of the application. Applicant contends that it was an application for a church stand within respondent's jurisdiction. On the other hand the respondent insists it was an application for a "commercial stand" in ward 6 Khaisa Village, Ntabazinduna. It is also common cause that applicant is on respondent's waiting list and on 6 July 2021, it paid \$60,00 as renewal fees for 2020 – 2021.

I take the view that by magnifying the difference in the purpose for which the proposed stand was sought, respondent is splitting hairs. I say so because while the application form is headed "Commercial Stand Application Form" applicant indicated in para 9 the purpose the stand is required as "church stand" – see annexure B on p 7 of the application. Also, the fact that the applicant is a church says a lot. Further, respondent has always known that the applicant was applying for a stand to build a church. On 21 October 2020, respondent's Chief Executive Officer wrote a letter to the applicant's legal practitioner in the following terms;

"Pursuant to your letter of the 25th of August 2017, please note that your application was not for a development permit but an application for land to build a church as you had not yet been allocated the land and you had been advised accordingly by our letter of the 5th of July 2017.

Umguza Rural District Council is still processing your application for land for the church and you shall be advised accordingly when the site plan and pegging plan for the church have been done." (my emphasis)

The above clearly proves that the respondent was aware that applicant's application was for land to build a church. Secondly, respondent was aware that applicant as at 21 October 2020 had not yet been allocated the requested land. Thirdly, respondent knew that the application was being processed and finally respondent appreciated the fact that a final decision on the merits of the application was still pending and that once made, that decision will be communicated to the applicant.

In light of this, it becomes surprising that respondent claims that a decision has already been made and that the decision was to offer applicant a stand which it turned down. I note that respondent did not attach any documentation to corroborate this alleged offer to applicant nor applicant's refusal of the said offer. Respondent does not disclose when the offer was made and when it was rejected nor does respondent disclose the identity of the individuals who represented the parties in this alleged offer and rejection of land.

To the extent that respondent's submission is in conflict with its earlier position in the letter dated 21st October 2020, I find its defence unmeritorious. I find further, that the respondent has not taken any action *vis-à-vis* the application for a period in excess of six (6) years. It goes without saying that applicant has a constitutional right to administrative conduct by the respondent is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair.

The respondent has already failed on the facts of this case to act within a reasonable period after being requested to take the decision by the applicant. The respondent has the relevant authority to grant or refuse the application for land. What the applicant is simply asking for is that a decision be made on its application and in the event that it is declined, reasons thereof be supplied. The failure to comply with s 3 of the Administrative Act is unreasonable and violates applicant's right in terms of s 68 of the Constitution of Zimbabwe.

Disposition

It is ordered that;

1. Respondent be and is hereby directed to make a written decision and provide reasons regarding applicant's application for an allotment of land namely, proposed church stand for Apostolic Mission (The Apostolic Church of Oregon) in Khaisa line Ntabazinduna, Umguza Rural District Council, registration number 124, receipt number 140907 within thirty (30) days of receipt of this order.
2. Respondent to pay costs of suit on an ordinary scale.



Messrs *James, Moyo-Majwabu & Nyoni*, applicant's legal practitioners
Calderwood, Bryce-Hendrie & Partners, respondent's legal practitioners

