KENNEDY G MANGENJE
versus
MINISTER OF LANDS, AGRICULTURE, FISHERIES,
WATER, CLIMATE AND RURAL DEVELOPMENT
and
RELEASE POWER INVESTMENT (PRIVATE) LIMITED
and
ONIYAS GUMBO
and
REGISTRAR OF DEEDS N.O
and
TBIC INVESTMENTS (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
CHITAPI J
HARARE; 13 March 2024

Opposed Court Application

O Ochieng with E Jera for the applicant
C Chitekuteku, for the 1st respondent
R Mabwe, for the 2nd and 3rd respondent
A Chambata, for the 5th respondent
No appearance for the 4th respondent

CHITAPI J: The dispute in this matter concerns a piece of land of substantial hectarage situate in the district of Goromonzi called remaining extent of Stuhm measuring 1074.7410 hectares. The property was registered in the name of Cecil Michael Reimer under deed of Transfer No. 3032/87. Consequent upon obtaining a subdivision permit to divide the land, Reimer created subdivisions called Lot 1 measuring 583.1360 hectares and Lots 2 and 3 measuring respectively 412.1091 hectares and 79 4959 hectares. The lots were sold respectively to TBIC Investments and registered under Deed of Transfer No. 1724/09 for Lot 1; to Damall Investments and registered under deed of transfer No. 497/97 and lastly to Douglasdale (Pvt) Ltd and registered under deed of transfer No. 9747/98 in relation to lot 3. This application concerns the claim by the applicant for the setting aside of the decision of the first applicant to issue the lease of lot 3 as herein described to the second respondent.

The parties to this application are Kennedy Godwin Mangenje an adult male who was issued with an offer letter by the Minister of State for National Security, Lands, Land Reform and Resettlement in the President's Office in terms of the Land Reform and Resettlement programme (Model AZ PHASE 11). The land allocated to him was the remaining extent of Stuhm situate in Mashonaland East Province measuring approximately 534 square metres. The offer letter was issued on 7 August 2006 and accepted by the first applicant on 2 February 2007.

The first respondent is the Minister of Lands, Agriculture, Fisheries, Water, Climate and Rural Development. In terms of the issuance of offer letters and leases over acquired and other State Land the first respondent is the successor Minister to the then Minister who issued the applicant with an offer letter relevant to this application. The newly described Ministry has been expanded in the scope of what the Minister covers or administers. There is no dispute about the functions of the first respondent and what he did in connection with the property in question *vis-à-vis* the applicant's claimed rights.

The second respondent is Release Power Investment (Pvt) Ltd, a duly incorporated company according to the laws of Zimbabwe and the third respondent is Onias Gumbo, a director of the second respondent. The fourth respondent is the Registrar of Deeds cited in accordance with r 61 the law which requires that the Registrar be made party to litigations which involves documents and information which is the responsibility of that office to keep or execute. The fifth respondent TBIC Investments (Pvt) Ltd is a duly incorporated company according to the laws of Zimbabwe. The applicant averred that it cited the fifth respondent as an interested party after he became aware that the first, second and third respondents and fifth respondents were involved in a dispute relating to the remaining extent of Stuhm which is also the subject matter of the current litigation.

The issue of rights of the applicant in the piece of land allocated to him in the offer letter has been subject of litigation which transcended this court, the Supreme Court and the Constitutional Court. The background history to the application as set out in the founding affidavit was that, after the applicant was offered the piece of land in dispute herein, that is subdivision of the Remaining Extent of Stuhm, by the first respondent, he faced resistance from the fifth respondent and proxies. The applicant instituted litigation in cases No. HC 601/11 and HC 9527/11. In case No. HC 601/11 the applicant sought to assert his rights to occupy the allocated

property in terms of the offer letter. In case No. HC 9527/11 the applicant sought an order for nullification of the withdrawal of the same offer letter by the first respondent. The first respondent had purported to cancel the applicants offer letter during the pendency of the litigation in case No. HC 601/11. The two cases were determined under consolidation by MAFISIRE J who rendered judgment HH 377/13 disposing of both cases.

The orders granted in case No. HC 601/11and HC 9527/11 to the extent relevant to the application *in casu*, were significantly that the withdrawal of the applicants offer letter dated 7 August 2011 by withdrawal letter dated 24 June 2011 was set aside. The court declared that the offer letter whose withdrawal had been set aside was "valid and effectual for all intents and purposes." A title deed No 1724/2009 which had been registered in favour of the fifth respondent over the property in dispute was cancelled. An order granting the applicant vacant possession of the property was issued.

Judgment No HH 377/13 was subject of an appeal noted against the whole judgment by the fifth respondent herein and one Paul Esau Upenyu Chidawanyika who had been a party in the applications adjudged in judgment HH 377/13. The Supreme Court dismissed the appeal on 1 March 2018 and noted that there was "absolutely no merit in this appeal." Dissatisfied with the Supreme Court judgment the losing appellants applied for leave to appeal to the Constitutional Court. Lease was refused under judgment No. CCZ 15/20 on 15 October 2020. The judgment of MAFUSIRE J which had been upheld by the Supreme Court in consequence remained extant. It is noted that after the Supreme Court judgment the applicant tried to evict the fifth respondent, Paul Esau Hupenyu Chidawanyika and proxies. An urgent application filed by the fifth respondent and Paul Esau Hupenyu Chidawanyika for an order barring the eviction was dismissed by TSANGA J in case No. HC 5197/18 by judgment No HH 410/18.

The dispute in this application concerns the subsequent actions of the first respondent in entering into an agreement of lease of the disputed piece of land wherein the property was leased to the second respondent. A notarial deed of lease between the first and second respondent was executed and registered by the fourth respondent in execution of his/her duties and allocated registration No. MA1591/2022 dated 25 July 2022. The notarial lease agreement was attached to the founding affidavit as Annexure 9 and equally just listed as such on the consolidated index

without description. If I may digress bit to comment on the consolidated index which is not rule compliant. Rule 58(2)(d) provides as follows:

> "General provisions for all applications 58(1). Every written application notice of opposition and supporting and answering affidavit shall…..
> (a) …….
> (b) ……
> (c) ……
> (2) Every written application and notice of opposition shall-
> (a) ……
> (b)…….
> (c)…….
> (d) where it comprises more than five pages contain an index clearly describing each document included and showing the page number or numbers at which, each such document is to be found."

It is clear from subparagraph (d) of para (2) of the r 58 that the index must clearly describe each document included. In *casu,* the consolidated index lists documents described as "annexure A1 etc and its page. The word "annexure A1" for example cannot be construed as a clear description of a document. In *casu,* the index referred to "Annexure 9" and when I looked for annexure 9 the word is an inscription on a document headed agreement of lease. The document which must clearly be described in the index should have been the lease agreement. The description if I may suggest could have been captured as:

> "Annexure 9 -Agreement of lease between the Government of Zimbabwe represented by first respondent and Release Power Investments Pvt Limited (second respondent) registered as a motorial deed of lease reg no. MA 1591/2022 dated 25 July 2022."

What is intended by the requirement to clearly describe a document is to enable the court and all parties to the case to properly appreciate the nature of the annexed document before even going through its content. In *casu,* it was cumbersome to relate to the annexures because a reference to the annexure number and page meant that I had to consider the index and then looked for the annexure then went back to the founding affidavit and ran through it to consider what that annexure 9 was really about. It seems to me that the index has to be detailed enough in its description of the actual document so that the court does not have to search for its description elsewhere in the affidavits. The description of the document must be clear and detailed in the index. It should after this warming not come as a surprise to litigants should their applications be struck off the roll for indexes which are not r 58(2)(d) compliant. Where there has been such

failure, the court may be justified to order costs *de bonis propiris* against the errant litigants' legal practitioner because the non-compliance with the rules in that regard is an issue bearing on the expertise of the legal practitioner who settles the papers for which he/she is paid and in relation to which the court expects the legal practitioner to be knowledgeable as a trained legal practitioner.

The digression done, I revert to the substance of the application. The lease agreement granted to the second respondent is basically at the centre of the application. The applicant seeks its setting aside on the main ground that there was no basis on which it was issued and that the issuance of the lease agreement was executed in contempt of the judgment of this court per MAFUSIRE J viz HH 377/13 which judgment recognised and declared valid the applicants' rights of occupation and use of the disputed piece of land by virtue of the offer letter issued by the first respondent. As already observed all attempts to set aside this judgment failed with the result that the judgment is still extant. The judgment was extant on the date of registration of the notarial deed of lease made in favour of the second respondent. The applicant in specific terms seeks the following order as pleaded in the draft order at pp 353-354 of the record:-

> "**WHEREUPON** After reading documents filed of record and hearing counsel,
> IT IS ORDERED THAT;
> 1. The decision of the 1st respondent to issue a lease to the 2nd respondent for a certain piece of state land being the remaining extent of Stuhm situated in the District of Goromonzi in Mashonaland East Province measuring 583.1360 hectares be and is hereby set aside.
> 2. The agreement of lease reference number ME/GORO60/01 entered into between the 1st and 2nd respondents with respect to the remaining extent of Stuhm situated in the District of Goromonzi Mashonaland East Province measuring 583.1360 hectares be and is hereby cancelled.
> 3. The 1st respondent be and is hereby permanently barred from withdrawing, or interfering negatively with the rights accorded to the applicant in terms of, the offer letter issued to him with respect to the remaining extent of Stuhm situated in the District of Goromonzi in Mashonaland East Province Reference Number LLRR 704 without following the due process of law.
> 4. The 4th respondent be and is hereby ordered and directed to cancel forthwith, the Notorial Deed of Lease Number MA1391 of 2022 dated 25th of July 2022 in terms of which the lease in the name of the 2nd respondent was registered.
> 5. 1st, 2nd and 3rd respondent be and are hereby ordered to pay the costs of suit on an attorney and client scale jointly and severally one paying the other to be absolved."

On the face of it and upon a consideration of the orders which the applicant seeks, the applicants principal antagonist is expectedly the first respondent because the dispute was born in that office in that the offer letter and the ensuing of lease agreement over the disputed land were acts done by the first respondent. It would have been expected that the first respondent as the

authority who issues, cancels and withdraws permissions granted over land, would provide a paper trail of how the disputed piece of land devolved up to the date of issuing the impugned lease agreement. However, the second, third and fifth respondents filed lengthy affidavits in which they resisted the application and put argument to support their positions. The first respondent was not out of advocates in his defence even though the respondents concerned were not privy to the execution of the lease agreement and cancellation of the offer letter.

The first respondent did not provide a detailed paper trial of the devolvement of the disputed piece of land. The first respondent averred that the disputed property was devolved to the third respondent in a process of restoration of title to the said third respondent as the previous owner of the property pursuant to the provisions of statutory instrument S.I 62/2020 called "Land Commission (Gazetted Land) Disposal in lien of Compensation) Regulations 2020. The S.I was passed in terms of s 21 read with s 17 of the Land Commission Act. The objects of the S.I are set out in s 3 thereof as follows:

> "The object of these regulations is to provide for the disposal of land to persons referred to in s 4, who are in terms of s 295 of the Constitution entitled to compensation for acquisition of previously compulsorily acquired agricultural land."

The persons entitled to be covered by the regulations are described in s 4 of the regulations and s 4 reads as follows:

> "**Identification of persons to whom these regulations apply**:
>
> "4(1) These regulations apply to the following persons who, before agricultural land owned by them was compulsorily acquired under the land Reform and Resettlement Programme (hereinafter in these regulations referred to "acquired agricultural land") were the owners thereof under a deed of grant or title deed or had completed the purchase of their farms from the state in terms of a lease with an option to purchase-
> (a) Indigenous individual persons (or where such persons are deceased, their legally recognised heirs);
> (b) Individuals who were citizens of a BIPPA or BIT country at the time their investments in agriculture land were compulsorily acquired under the Land Reform and Resettlement Programme (or where such persons are deceased their legally recognized heirs)'
> (c) Partnerships if the partners who held any farm jointly were
> (i) Indigenous individual or
> (ii) Citizens of BIPPA or BIT country;
> (2) where-
> (a) and individual (whether indigenous or not) had completed the purchase of a farm from the state in terms of a lease with an option to purchase; and
> (b) before obtaining title thereto from the state, the individual sold the farm to an indigenous individual in the expectation that a title deed or deed of grant will be granted; and

> (c) before the title was issued in relations to such farm the farm was acquired under the Land Reform and Resettlement Programme;
> The indigenous purchase may lodge an application in terms of these regulations."

At the commencement of hearing Advocate *Mabwe* for the second and third respondents addressed the points *in limine* which the applicant opposed. The first and fifth respondents did not raise any dilatory points. The first point was that there was no proper application before the court because the applicant did not indicate in his papers the basis of seeking the review. It was submitted that the applicant ought to have indicated whether the review was based on s 68 of the Constitution, or the High Court Act [*Chapter 7.06*] or the common law or ss 3 and 4 of the Administrative Justice Act [*Chapter 10.28*]. Counsel however conceded in para 1-8 of her heads of arguments that para 10 of the founding affidavit related to the grounds for review. The applicant stated as follows in para 10:

> "C. THE BASIS OF THE APPLICATION
> 10. The application is based on the following, which shall be fully expanded and become apparent when I deal with the factual grounds of the application.
> 10.1 The actions of the first respondent in issuing a leave to the first respondent are unprocedural unlawful, contemptuous of the existing court order and a negation of my constitutional and administrative justice rights.
> 10.2 There is no legal or factual basis upon which the second respondent could competently be issued a lease to the remaining extent of Stuhm.
> 10.3 The exercise of the discretion by the first respondent to the second respondent under the circumstances of this case is grossly irrational."

The applicant then went on to give the background to the application.

The applicant responded to the points *in limine* in the heads of argument. It was submitted by Advocate *Ochieng* that the application was not made in terms of r 62(2) of the High Court Civil rules which provides that in a review application, the applicant should state shortly and clearly the grounds of review and the relief sought. The applicant sought to avoid the provisions of sub rule (4) of the same which requires that a review application should be brought within eight weeks of the making of the decision or determination which the applicant seeks that it be set aside. The second and third respondents had also raised the *in limine* objection that the applicant had filed this application out of time without seeking and obtaining condonation and an extension of time to file the application. This issue was however, not pursued at the hearing. There is therefore no need to dwell on it nor give a determination thereon. The issue of the defective nature of the application was however persisted in.

The applicant averred that its application was filed in terms of ss 3 and 4 of Administrative Justice Act [*Chapter 10.28*]. It was correctly submitted that there was no time line provided for under the Administrative Justice Act for filing a review application pursuant to rights to seek relief given in the Act in particular in ss 3 and 4. Courts have however had to deal with interpreting the requirements of a s (4) application under the Administrative Justice Act. In the Supreme Court Judgment in the case of *Gwaradzimba N O* v *Gunta A G* 2015(1) ZLR at p ……JA stated at page.

> "…….As correctly stated s 4(1) of the Administrative Justice Act ("THE ACT") provides that the statutory relief referred to by the judge a quo may be sought by way of an application to the High Court. However, in specific format for such application is prescribed while a review in terms of the High Court Rules is a special form of application; there is nothing in s 4(1) to suggest that any other form of application for judicial review would in any way offend against that sub-section as long as it meets the requirements of an ordinary application."

The next question is, what are the requirements of an ordinary application? The requirements of an ordinary court application are the ones listed in rr 57 – 59 to be adopted *mutatis mutandis* to relate to a specific case.

Advocate *Mabwe* however submitted that the application being one for review ought to have been r (62) compliant. I have already related to this rule that requires that the application should state "shortly and clearly the grounds upon which the applicant seeks to have proceedings set aside." Counsel submitted that the applicant's depositions in para 10 of the founding affidavit did not constitute strict compliance with r 62(2). She submitted citing several authorities that the word "shall" used on r 62(2) required that there be exact compliance with the rule. The argument by counsel if accepted by the court would have put paid to this application in that the application would have been struck off the roll for want of compliance with r 62(2).

The applicant however submitted that his application was not made under r 62(2) but under the Administrative Justice Act for which no specific format of the application is provided for. I have read the applicant's court application and did not find in all his papers and affidavits, any reference to r 62(2). It cannot therefore be assumed that the applicant made the application in terms of that rule. Advocate *Mahwe* did not point out to any facts or indicators in the applicant's papers to suggest that the application was not made in terms of the Administrative Justice Act. It follows that Advocate *Mabwe*'s argument and the second and third respondent's objection *in limine* on the form of the application must be dismissed. There were no submissions made by the

second and third respondents that they suffered prejudice in their defence by reason of the procedure adopted by the applicant which they impugn.

It follows that the issue of delay and the need for condonation of the late filing of the application based upon an alleged non-compliance with the eight weeks' time limit for filing a review application as provided for in r 62(4) does not arise for my determination and in any event the issue of delay as earlier noted was not persisted in. I however wish to give a view on the issue that no formal procedures are provided for in the making of a review application under the Administrative Justice Act. I have considered that r 95 of the current Rules 2021 may be the correct rule to apply because it covers all appeals and reviews brought to this court other than the excepted and listed instances set out in r 95(2). In terms of sub-rule (8) of r 95, the time limit for filing the review would be fifteen days from the date of the decision sought to be reviewed. The court can extend the time limit on application. I however do not determine the point since the issue was not argued before me and the applicant can ride his luck this time.

As far as the merits of the application are concerned, there is no dispute on the fact that by an extant judgement of this court, the offer letter granted to the applicant was given effect to and the applicant's rights to the land, occupation and use were determined in his favour. The real issue arose from the administrative decision taken by the first respondent to grant a 99 year lease dated 1 June 2022 over the same piece of land to the second respondent. The lease agreement did not make any reference to the existing *status quo* of the land as declared by the court. In other words the position which then obtained following the granting of the lease was that there was an extant offer letter in favour of the applicant which predated the lease agreement, the latter being another document conferring rights of occupation and use to the second respondent. The applicant averred that it was unlawful and irregular for the first respondent to issue the second respondent with a lease agreement over a property occupied by the applicant by virtue of a legal authority in the form of an offer letter confirmed by the court to be extant.

The applicant further averred that the grant of the lease to the second respondent was done without reference to him, yet he would be directly affected by the lease agreement whose effect was to remove him from the piece of land. The first respondent in his opposing affidavit averred that he acted in terms of S.I. 62/2020 which permits for the restoration of land to a previous owner upon application by the previous owner. This assertion led to another dispute raised in the papers

as to whether or not the second respondent was the previous owner of the property. This issue would have been properly considered by a Committee established under s 5(2) of S.I. 62/20 and appointed by the first respondent for the purpose of considering applications for restoration of title made by previous owners over land compulsorily acquired by the State under the Land Reform and Resettlement Programme.

The first respondent in para 7 averred that:-

> "7. The committee made a decision to restore title to the third respondent on the Remaining Extant of Stuhmn given that he had met all the requirements."

There is an obvious anomaly here because whereas the lease issued by the first respondent was made in favour of the second respondent, a corporate entity with its own independent existence, yet the third respondent avers that it is him who was the previous owner of the land in question and the first respondent also avers that the land was restored to the third respondent. There appears to have been a conflation of the second and third respondents, an untenable position at law. The situation was not made easy by the failure by the first respondent to provide any evidence of the Committee's deliberations. To simply state that the Minister acted on properly taken recommendations of the Committee without showing that the steps and considerations required to be taken in terms of s 6 and 7 of S.I. 62/2020 were followed is insufficient where a decision is taken on review because a review interrogates *inter-alia*, procedural compliance in terms of the law under which the authority whose decision has been taken on review will have purported to act. The easiest and certainly the correct and logical way for the Minister to justify his impugned decision or action would be to just provide a paper trial of how the process evolved whilst providing any supporting documents as may in law be open and available to the Minister to produce. In this way, the authority in question will show that the procedure for restoration of title in terms of S.I. 62/2020 was followed. Where this has not been done, the court cannot assume that the process was followed. I will accordingly not make such an assumption.

I have considered the opposing affidavits of the second, third and fifth respondents in relation to the impugned process as alleged by the applicant to have been carried out by the first respondent. These respondents were not party to the decision made by the first respondent to lease the land in dispute to the second respondent. They were not part of the Committee established in

terms of S.I. 62/2020. They did not produce any evidence of the deliberations of the Committee or of the first respondent. Their postulations and support for the position of the first respondent do not stand on any sound factual basis. The Committee and/or the first respondent would be best placed to provide a paper of compliance with the procedural law on the restoration of the land to the second respondent as the entities empowered to act and give decisions.

The first respondent stated in para 10 of his opposing affidavit that:-

> "10. It must be understood that the S.I. 62/2020's model of compensation or restoration of title does not provide for prior consultation on the ground. As such the committee was never aware that these was an existing court order validating the applicant's offer letter which was withdrawn in 2011. Consultations which would engage the applicant were going to be the next step after the Committee's decision to restore title.
> 11. As such there was never any attempt to override an existing court order as the applicant would want the courts believe."

In para 22 of his opposing affidavit the first respondent stated:-

> "22. This is denied. The first respondent by issuing the 99 year lease to the third respondent was never in any bid to willfully violate any law or court order. In fact, the applicant upon obtaining a court order failed to execute his order. As such our internal data base failed to pick up that there was a tenure document which was still valid on the farm known as the Remaining Extant of Stuhm"

I must note the reference to the third respondent as being the one to whom the 99 year lease was restored. It is in fact the second respondent, the company which is the lessee and not the third respondent.

In para 28 of his opposing affidavit the first respondent deposed further as follows:

> "28 Furthermore if the court order (sic) referred to by the applicant is alleged to have been restored by a court and is now valid as claimed it seems that the condition of the offer letter still applies. The Minster still reserves the right to withdraw that offer letter as a necessary in this case the restoration of title to rightful owner ie the third respondent''

I have considered the first respondents' depositions in the quoted para 10, 22 and 28 of his opposing affidavits. The first respondent does not deny the existence and validity of the court order that restored the applicant's offer letter and applicant's possessory and occupational rights over the land in issue. Once there was acceptance of the existence of the court order and its extant status, it meant that the decision to lease the land to the second respondent was taken without reference to the court order as accepted by the first respondent and without reference to the applicant who was lawfully in occupation of the land.

The first respondents submission in para 10 of his opposing affidavit that S.1. 62/2020 does not provide for prior consultation and that the engagement of the applicant would only take place after the restoration of the land to the previous owner was with respect misinformed. It is provided for in s 2 (1)(b) and (c) of the Administrative Justice Act that "A Minister or Deputy Minister or Deputy Minister of State or a committee or board appointed in terms of any enactment is an administrative authority for purposes of the application of the Administrative Justice Act. Section 3(1) of the Act provides for persons to whom certain rights are granted to be given effect to by an administrative authority. The administrative authority must in making decisions have regard to a person whose right may be affected by the administrative action sought be made or a person with a legitimate expectation. The administrative authority is required *inter alia* to afford the affected person an opportunity to make adequate representations in regard to the intended administrative decision after giving such affected person adequate notice to make the representations. The first respondent did not plead any departure or justification for not complying with the requirements of s 3(3) of the Administrative Justice Act. The applicant without doubt was entitled to be given notice of the action intended to be taken as would affect his right and /or legitimate expectation. The fact that S.I did not provide for a reference to the affected person is neither here nor there because the provisions of s 3 of the Administrative Justice Act apply to all administrative authority decisions.

The failure to give notice to the applicant amounted to the denial to the applicant of the *audi alteram partem* rule. The applicant had a right to be heard first before the decision to offer the 99 years lease to the second respondent was made by the Committee and the first respondent. The applicant's allegation that the decision to lease the land was made without reference to him was not challenged. The first applicant surprisingly sought to justify the non-reference to the applicant in the making of a decision adverse to applicants' rights on the basis that S.1 62/2020 did not provide for consultation, a patently untenable position in law in view of the interpretation and application of the Administrative Justice Act. The moment that the first respondent confessed to the process of restoration of the land having been done without reference to the applicant, he could not justifiably avoid the effects of the omission on the basis that the S.1. 62/2020 did not provide for consultation. The more appropriate approach given the wide application of the

administrative Justice Act should have been to ask oneself whether or not the S.1 forbade or excluded consultation. It does not.

Overally therefore the process of the restoration of the land in issue to the second respondent by way of issue of a 99 year lease without reference to the encumbent offer letter holder as validated by the court and therefore seemingly disobeying an extant court order was a botched process which does not pass scrutiny when considered against the failure of the Committee referred to by the first respondent as having made a decision which the first respondent without reference to the applicant also endorsed.

The second, third and fifth respondents raised other objections and issues which I however do not consider necessary to deal with because the issue of the first respondents failure to abide the Administrative Justice as well as the non-reference to the extant court order in the process of issuing the 99 years lease to the second respondent rendered the decision to and the issuance of the issue a fatality. The process must be set aside. The committee and the Minister (first respondent) are required to abide the obligations placed upon them by the provisions of the Administrative Justice Act when determining matters which affect interested parties or parties with a legitimate expectation which may be adversely affected.

Curiously though the S.1.62/2020 provides in s 7(a) and (b) that the Committee must consider:

> "(a) Whether the farm in question is wholly or partially occupied by A1 permit holders or holders of 99-year leases.
> (b) Whether the applicant in question is in occupation of the farm or part of it."

The considerations in the quoted section clearly require that the situation on the ground is established. The averment by the first respondent that use was made of information in the data base that showed that the applicant offer letter had been cancelled amounted to a perfunctory discharge of the Committees functions. In my view had the Committee and Minister been advised to consider the situation on the ground, it is likely that the information on the occupancy and interest of the applicant may have been gathered and in the process the existence of the court order. The committee and the first respondent would have proceeded advisedly in making the decision which has been found to be fatal.

The applicant has also prayed for an order that the first respondent be barred from withdrawing or interfering with the applicants offer letter. Such order if made would be unlawful.

It has no legal basis. The court cannot stop lawful processes by administrative authorities but can only review them when an affected person files a complaint or appeal with the court as the law may provide.

The last issue relates to costs. The applicant seeks punitive costs. The applicant averred that the first second and third respondents acted fraudulently, contemptuously and unlawfully. In my consideration of the papers no fraudulent act was established as having been committed by any the respondents. In fact, none was alleged. I cannot also not make a finding of contempt of court against the said respondents. I make the guarded comment that contempt of court is a relief sought in separate process provided for in the rules of court and a party accusing another of contempt of court and seeking a founding to that effect must follow the correct procedure as set out in r 79 of the High Court Rules 2021.

In a review, the court considers *inter- alia* the legality of decisions of administrative authorities. I do not find scope for making a costs order against the second and third respondents because they did not make the impugned decision. The first respondent should therefore bear the costs of this application on an ordinary scale.

Before I issue the order, which disposes of this application, I should record that the High Court per MUSITHU J determined by judgement HH 603/22 dated 12 September, 2022 that S.1 62/2020 was ultra vires s 21 as read with s 17 of the Land Commission Act [*Chapter 20:29*] and s 293 of the Constitution and was consequently invalid. The judgment is not binding until confirmed by the Constitutional Court. Somehow that judgment was not brought to the attention of the Court and counsel made no submissions in relation to the validity of S.1. 62/20. Fortunately, in view of the basis on which this judgement has been founded it is unnecessary for me to interrogate the legality of S.1. 62/20. My decision is based upon the failure by the first respondent to abide the procedures to act fairly, procedurally and lawfully as required under the Administrative Justice Act.

I dispose of this application as follows:

IT BE AND IS HEREBY ORDERED THAT**:**

1. The first respondent's decision to issue to the second respondent the notarized 99 years lease agreement dated 25 July, 2022 reference No ME /GORO 60/01 in respect of the piece

of land called the remaining extent of Stuhm situated in Goromonzi District measuring 583. 1360 hectares is set aside for procedural irregularity.

2. Notarial Deed No MA 1591/2022 dated 25 July, 2022 is set aside and the fourth respondent is ordered to cancel it.
3. The first respondent if advised is at liberty to follow the correct procedures for the cancellation of the offer letter issued in favour of the applicant and the subsequent issuing of the lease of the same land to the second respondent.
4. The first respondent to pay costs of the application.

Moyo & Jera, applicant's legal practitioners
Civil Division of the Attorney General's Office, first legal practitioner
Gill Godlonton &Gerrans, second & third legal practitioner
Chambati Mataka & Makonese, 5th respondent legal practitioner