

DHERERAI MANYONI
versus
COMMISSIONER GENERAL OF POLICE
and
ASSISTANT COMMISSIONER GORA

HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 16 NOVEMBER 2015 AND 11 FEBRUARY 2016

Urgent Chamber Application

Applicant in person
L. Msika for 1st and 2nd respondents

MAKONESE J: On 10 November 2015, the applicant filed an Urgent Application seeking the following relief:

“INTERIM RELIEF SOUGHT

The respondents be and are hereby interdicted from forcibly taking the applicant to go and serve at Fairbridge detention barracks before the finalization of Constitutional Court Application under case number CCZ 90/15.”

After hearing the parties I dismissed the matter and indicated that my full reasons would follow. I indicated that the matter was not urgent for reasons that will become apparent in this judgment.

The applicant is a regular member of the Zimbabwe Republic Police stationed at Stops/Rose Camp, Bulawayo. He holds the rank of Sergeant. In February 2012 the applicant appeared before a single officer charged with two counts of contravening paragraph 35 of the Schedule to the Police Act [Chapter 11:10] as read with section 29 and 34 of the said Act. It was alleged that applicant acted in an unbecoming or disorderly manner or in any manner prejudicial to good order or discipline or reasonably likely to bring discredit to the Police Force. In the first count it was alleged that the applicant sold “infringed” disks to members of the public. In the second count the applicant was arrested for driving without a valid driver’s licence on 12 December 2011. The applicant conducted his own defence, pleaded not guilty to both counts but

at the end of the trial he was convicted and sentenced to five days imprisonment on each count at Fairbridge Detention Barracks. The applicant lodged an appeal against conviction and sentence with the Commissioner General of Police on 29 February 2012. The appeal was dismissed on 20 June 2012. The applicant was advised that he was to serve his sentence without delay. The applicant employed various tactics to avoid serving the sentence which clearly amount to flagrant abuse of court process.

In his urgent application, the applicant contended that for the past few years he had not laid his hands on the judgment by the Commissioner General. The applicant raised spurious allegations against the second respondent whom he accused of holding personal grudges against him. Applicant further argued that he was being frustrated by the first respondent who was blocking his request for study leave. The applicant claimed to have filed a Constitutional challenge with the Constitutional Court. The applicant failed to prove that he had filed such an application. At the time of the hearing of the application the respondents had not been served with any court papers from the Constitutional Court.

The court was concerned by the non-disclosure by the applicant that he had previously filed an application for review in this court under case number HCR 2165/12. A written judgment by MOYO J, HB28/14 indicates that the applicant launched an application for the review of the decision of first respondent. The application was dismissed for lack of merit. The issues raised in this urgent chamber application have already been dealt with by MOYO J in the ruling referred to. The applicant is clearly abusing court process. His non-disclosure of material facts is fatal to the application. On this basis alone, the court may not hear the applicant.

I must observe that a tendency is developing of serving members of the Zimbabwe Republic Police, who when properly convicted and sentenced under the Police Act, rush to the High Court, ostensibly seeking a review of the decisions made in terms of that Act. In the majority of the cases now flooding the courts, these applications for review are meant to delay and frustrate the execution of orders made under the Police Act.

This application is not urgent at all. It is made in bad faith. For these reasons I dismissed the application.

Civil Division Attorney General's Office, respondents' legal practitioners