

CHRISTOPER MABHUNU

Versus

THE COMMISSIONER GENERAL OF POLICE

And

SUPERINTENDENT PHILIP

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 20 MAY & 16 JUNE 2016

Opposed application

Mlalazi for the applicant

Ms Hove for the respondents

MAKONESE J: The applicant in this case is a Sergeant in the Zimbabwe Republic Police stationed at Entumbane Police Station, Bulawayo. He was charged and convicted by a single officer for contravening paragraph 35 of the Schedule to the Police Act as read with section 34 of the said Act (Chapter 11:10), “acting in an unbecoming or in any manner prejudicial to the good order or discipline or reasonably likely to bring discredit to the police service”. He was sentenced to pay a nominal fine of US\$10. Aggrieved by that decision he launched an appeal with the Commissioner General of Police in terms of the Police Act. The appeal was dismissed by the 1st respondent. The applicant paid the fine but has approached this court seeking a review of the decision by 1st respondent.

The order sought by the applicant is couched in the following terms:-

- “1. That the conviction which was confirmed by 1st respondent be and is hereby set aside.
2. That after the setting aside of the conviction, no Board of Inquiry/Suitability may be instituted on the matter.
3. That there are no order as to costs.”

The application is opposed by the respondents who contend that the application is baseless and is devoid of merit. The respondents argue that the applicant has not pointed to any irregularity in the proceedings conducted by the single officer or in the manner in which the appeal was handled by the 1st respondent.

Factual Background

On the 6th June 2012 one Mxibi Masuku a driver at Townsend High School, Bulawayo was given a note by the school head authorizing him to park a school minibus at Entumbane Police Station overnight for security reasons. It is common knowledge that members of the public often park their vehicles outside police stations overnight, where they perceive security to be tighter, than at their own residences. In this instance the school driver resided near the police station and it was found prudent that after completing his runs, he would park the school bus at a safe place. What appeared to be a simple and straight forward request to park the school bus suddenly turned ugly leading to the police disciplinary inquiry, which is now the subject of this review. Masuku walked into the charge office at Entumbane late in the night. Behind the desk was the applicant. He was the duty officer on that particular night. Masuku handed a written letter to the applicant which had been authored by the school head. The applicant took the letter and read it. The school driver was not quite prepared for the response he received from the applicant. The applicant was not amused. He asked Masuku whether the police station was a car park. He was not yet done with the stunned driver. He stated that the police were not “Safeguard” personnel who looked after people’s properties. He then examined the letter again and said the letter was not properly written. Applicant pointed out that the letter from the school head was not “requesting” but “authorizing” that the vehicle be parked at the police station. The applicant took the letter and made some comments in red ink at the bottom of the letter. The words endorsed on the letter by the applicant were certainly not kind but strong words. He remarked as follows:-

HB 151/16
HC 1741/14

“Mrs M. Moyo

Please be advised that it is not our mandate and requirement as our organisation ZRP to safeguard your vehicle at our camp.

Find your own means, police officers are not security guards and there is no car park for safekeeping vehicles.

Signed
Sgt Mabhunu”

Masuku parked the minibus outside the police station and left. I cannot quite comprehend what it is that caused such response from the applicant. I am sure that the school head at Townsend High School knew very well that Entumbane Police Station was not a car park. I am also certain she was aware that the Zimbabwe Republic Police had no mandate to provide security services to members of the public. Mrs Moyo, the school head at Townsend High School found the letter to be rude and utterly unprofessional. She filed a complaint with the Zimbabwe Republic Police. I reproduce hereunder the complaint letter that eventually set in motion disciplinary proceedings against the applicant:-

“Assistant Commissioner Gora
Zimbabwe Republic Police
Bulawayo

14 January 2013

Dear Sir,

Re: Complaint on attached response from Sergeant Mabhunu

Please find attached a letter which was written by the Head of Townsend High School authorizing the school driver to park the school kombi at Entumbane Police camp during the Youth Education through Sport (YES GAMES) which were being hosted by Bulawayo from 6 December to 9 December 2012 and the SRC had requested for a donation in the form of transport from Townsend High School.

The driver Mr Masuku resides in Entumbane and due to the late hours that he was going to be working during this National event, it was only logical to allow him to take the kombi to Entumbane and then, because he had no safe place to park the car overnight, it was seen fit that he be authorized to park the kombi at the nearest police station with the understanding that the ZRP is always there to offer security in time of need, especially during National events.

It is therefore very surprising and disappointing to get the response that is written in red ink from Sergeant Mabhunu. He even chose to underline and write in red ink on the same letter written by the head and this office views that as gross disrespect and very unprofessional. This school enjoys very cordial relations with the ZRP in general and would not like to spoil the relationship because of Sergeant Mabhunu's rudeness. We feel that he should have denied us the service in a polite manner if at all it was necessary to deny that service. Townsend High is a Government school and will always rely on the ZRP to offer assistance when it is needed.

Our apologies if the school erred in requesting for your organisation's service and please do not hesitate to correct the school. If the school did not err, then we request that corrective action be taken to mend the relations that have turned sour because of Sergeant Mabhunu's response."

The Officer In Charge, Entumbane was instructed to institute disciplinary proceedings against the applicant. A trial by a single officer was conducted by Superintendent Evelyn Taurai Philip in terms of the Police Act. Applicant was duly convicted. His appeal against both conviction and sentence was dismissed by 1st respondent.

On 29th July 2014, applicant filed a Court Application For Review. The broad grounds for review are that:

1. The single officer had no jurisdiction to preside over the matter.
2. The trial officer was biased in the manner she conducted the proceedings.
3. The trial officer denied her the opportunity to secure legal representation.

I now deal with each of the grounds for review.

The trial officer lacked jurisdiction

The thrust of the applicant's argument is that in terms of the police uncoded Rules dated 17 April 1980 it is provided that:

“As far as possible, and without serious impairing of efficiency, members of rank of sergeant, sergeant major and section officer may not be tried by an officer who has less than three years in rank of Superintendent and above.” (emphasis mine)

1st respondent contends that despite the fact that the trial officer was one year in the rank of Superintendent, she had the jurisdiction to try the applicant in terms of section 34 of the Police Act (Chapter 11:10), by virtue of being an officer of the rank of Superintendent. The relevant section provides as follows:

“34. A member, other than an officer, who is charged with a contravention of this Act or any order made thereunder or any offence specified in the Schedule may be tried by an officer of or above the rank of Superintendent and sentenced to any punishment referred to in paragraph (d) of subsection (2) of section twenty-nine.”

It is clear that the Police uncoded rules were essentially crafted for the purposes of enforcing police discipline in the Zimbabwe Republic Police. These rules do not replace the Police Act. They compliment the Police Act. The provisions of the uncoded rules state that “as far as possible, and without serious impairing of efficiency of members, a member should be tried by a person holding the rank of Superintendent for at least three years.”

I have no doubt that the trial officer had the jurisdiction to preside over the disciplinary hearing. The power to preside over the matter is derived from the provisions of section 34 (1) of the Police Act. I conclude therefore, that this ground of review has no merit.

The trial officer was biased

I have carefully perused the record of proceedings and there is no evidence of bias or malice on the part of the trial officer. The applicant was given the chance to defend himself. He cross-examined witnesses at length and in an effective manner. He was given the chance to

bring his witnesses to the hearing but failed to do so. He was content to argue that his witnesses were unwilling to come and testify in his favour. In particular, the applicant indicated that he wished to call the officer in charge at Entumbane Police Station at the time. The fact of the matter is that the report by the Officer In Charge Police Station Entumbane is part of the record of these proceedings. In that report the Officer In Charge was of the view that this was a minor issue, but that was not the view of the Officer Commanding Bulawayo District who gave a direction for disciplinary proceedings to be instituted against applicant. The trial officer did not conduct these proceedings in an irregular manner. The record clearly shows that whenever the applicant required the case to be postponed his requests were granted.

On this ground of review, I did not find any evidence of bias from a reading of the record. If anything, the trial was conducted in a fair and proper manner.

The trial officer denied applicant the opportunity to secure legal representation

I observe that the trial before the single officer was not finalised on a single day but over a period of time extending from 17 May 2013 to 18 November 2013. The matter was postponed on four different occasions. Applicant was given ample time to engage the services of a legal practitioner of his own choice. This is buttressed by the fact that the applicant indicated when the trial commenced that he wished to conduct his own case. In any event, applicant could have engaged a legal practitioner at any stage of the trial. The trial officer did not prevent the applicant from engaging a legal practitioner of his choice. The record reflects that at the close of the state case applicant requested a postponement to enable him to engage the service of a legal practitioner. The matter was postponed for continuation to the 5th July 2013. When the trial resumed applicant was asked whether he had secured the services of a lawyer. Applicant responded by pointing out that he did not mean to bring a lawyer as such but that he just wanted to consult. Applicant then proceeded with his defence case. Applicant requested a further postponement after leading evidence, indicating that he wished to call a crucial witness in support of his defence. The matter was again postponed to the 28th August 2013 at the instance of the applicant. When court resumed applicant informed the trial officer that his witness was

not going to attend court. The applicant closed his case and made oral submissions in quite some detail. It is clear that the trial was conducted fairly and that at all material times the applicant was afforded the opportunity to engage the services of a lawyer. There was no irregularity in the manner the trial officer handled the proceedings.

Under section 69 (4) of the Constitution of Zimbabwe Amendment (No. 20) 2013, the applicant's right to a fair hearing is asserted in the following terms:

“Every person has a right, at their own expense, to choose and be represented by a legal practitioner before any court, tribunal or forum.”

The question of legal representation was considered in the following cases:- *Dladla & Others vs Administrator, Natal & Others* 1995 (3) SA 769 (N); *Pett v Greyhound Racing Association Ltd* [1969] 1 QB 125 (CA) [1968] 2 ALL ER 545; *Chirenga v Delta Distribution* HH-75-03.

As I have already pointed out the applicant was given enough time to secure the services of a lawyer. The matter was postponed at his instance and when proceedings resumed he stated that he just needed to consult. The facts of this matter clearly indicate that the applicant was not denied the right to a legal practitioner. His contention that he was not treated fairly is to say the least, being disingenuous.

The application lacks merit. In my view the trial officer had jurisdiction conferred upon her under section 34 Police Act. There is no evidence of bias in the conduct of the trial. The applicant was at all material times given the opportunity to engage the services of a legal practitioner. He chose to represent himself.

In the result, I find that this application is ill-conceived and make the following order:

1. The application be and is hereby dismissed.
2. There shall be no order as to costs.

Dube-Banda, Nzarayapenga, applicant's legal practitioners
National Prosecuting Authority, respondents' legal practitioners