

JIMITIAS CHIGURUGUDU

Versus

**CHAIRPERSON OF THE EX-POLITICAL PRISONERS,
DETAINEES & RESTRICTEES BOARD**

And

**MINISTER OF WELFARE SERVICES FOR WAR
VETERANS, WAR COLLABORATORS, EX-POLITICAL
DETAINEES & RESTRICTEES**

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 15 & 23 FEBRUARY 2017

Court Application for a Declaratur

T. Zishiri for applicant
L. Msika for respondents

KAMOCHA J: The applicant sought for an order of this court in the following terms:-

“It is ordered that:-

- (a) the applicant be and is hereby declared an ex-political prisoner in terms of section 2 of the Ex-Political Prisoners, Detainees and Restricttees Act (Chapter 17:10);
- (b) the respondents to pay costs of suit only in the event of opposition, the one paying the other to be absolved.”

The common cause facts of the matter are that during the war of liberation of this country the applicant was an active member of the United African National Congress (UANC). He used to mobilize villagers to attend political meetings whereat assistance in cash or kind would be collected for the fighters.

In December, 1975 he mobilized masses to attend a UANC meeting in Triangle where money and sundries were collected for that purpose. The authorities became aware of the applicant’s activities and he was arrested in January 1977 and taken to Triangle Police Station

where he was charged with contravening section 51 (1) (c) of the Law and Order Maintenance Act [Chapter 65]. He was then taken to a restriction camp in Buffalo Range pending trial. He appeared for trial in the Magistrates Court Chiredzi on 18 February 1977 and was convicted. He was sentenced to undergo five (5) years imprisonment of which four and half (4 ½) years was suspended on the customary condition of future good behaviour. His effective sentence was six (6) months imprisonment.

He started serving his prison term on 18 February, 1977 and was released from prison on 18 June, 1977 after serving 4 months imprisonment. He had the benefit of two months imprisonment remission due to his good behaviour in prison.

In 2007 he sought to be considered an ex-political prisoner as envisaged by the Ex-Political Prisoners, Detainers and Restrictees Act [Chapter 17:10] – the Act. The authorities turned down his request for the reason that after his benefit of two months remission the remaining period of four months imprisonment he served fell short of the minimum period of six months required to qualify as an ex-political prisoner.

The applicant then brought this application to court for a determination to be made as to whether or not he was an ex-political prisoner who was entitled to benefit in terms of section (2) of the Ex-Political Prisoners Act [Chapter 17:10].

Section 2 of the Act which is the interpretation section defines an ex-political prisoner as follows:

“ “ex-political prisoner, detainee or restrictee” means any person who after 1st January, 1959, was imprisoned, detained or restricted in Zimbabwe for a period of at least six months, or for two or more periods amounting to not less than six months, for political activity in connection with the bringing about of Zimbabwe’s independence on the 18th April, 1980.”

What admits of no doubt is that the applicant’s activities in the Triangle area in December 1975 were in connection with the bringing about of Zimbabwe’s independence on 18

April, 1980. But after his conviction and sentence was he imprisoned, detained or restricted for a minimum period of six months?

The prison records filed of record show that he was admitted into prison on 18 February, 1977 and was released therefrom on 18 June, 1977. He was imprisoned for four months. This is in fact common ground.

However, applicant contended that his effective sentence was six months imprisonment although he got the benefit of two months remission for good behaviour while in prison. He should still be regarded as having been in prison for six months and had served the full six months imprisonment not 4 months. That is untenable.

The clear intention of the Legislature is that the person must literally be imprisoned, detained or restricted at the very least for a period of six months. Meaning that a person may have been picked up by the police or any arm of the authority for activities relating to the bringing about of the independence of Zimbabwe and detained at some place such as Hwahwa or Gonakudzingwa for at least 6 months or restricted at a striction camp such as the one that was at Buffalo Range for not less than six months. If the person is tried and convicted, the actual period he spent in prison ought not to be less than six months. The literal grammatical rule applies *in casu* since the language used is clear and allows no room for ambiguity.

Applicant had an effective sentence of six months imprisonment but was actually imprisoned for four months. In my view, what is relevant is the four months which he actually spent in prison not the effective sentence of six months. He spent the remaining two months out of prison after he was released on 18 June, 1977.

In the result, his application fails and is hereby dismissed with costs on the ordinary scale.

Garikayi & Company, applicant's legal practitioners
Civil Division of the Attorney-General's Office, 2nd respondent's legal practitioners