KUZIVA TIGERE
versus
POLICE SERVICE COMMISSION

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 5 May 2015

Urgent application

B Mupwanyiwa, for the applicant
T Tabona, for the respondent

MATHONSI J: Self-created urgency, that urgency which stems from deliberate inaction until the day of reckoning is nigh, is not the urgency contemplated by the rules of this court. A party that refrains from taking action when the need to do so arises only to dash to court at the eleventh hour as if the subject matter has just arisen will be stopped dead on the tracks because the court will not entertain a calamity of the litigant's own making. Regrettably that is exactly what the applicant has done.

He was a sergeant in the Zimbabwe Republic Police attached to CID Harare but his history of service appears to have been punctuated by disciplinary problems dating back to 2 March 2002 when, then a police constable, he was charged with consuming liquor in a public place, that is at Glen Roy Shopping Centre Highlands Harare, in contravention of s 116 (1) (n) of the Liquor Act [*Chapter 14:12*].

What however led to his current predicament are 2 charges that were preferred against him when he appeared before a Single Officer on 30 August 2013. In the first count he was charged with acting in an unbecoming or disorderly manner prejudicial to good order or discipline or reasonably likely to bring discredit to the Police force in contravention of para 35 of the Schedule to the Police Act [*Chapter 11:07*] as read with s 35 of the Act.

The facts were that on 3 December 2011 he had telephoned the complainant and advised him that at his workplace there was a firearms auction. He was then given a total of $720.00 by the complainant to purchase a CZ 9mm pistol and a gun cabinet for it as well as to obtain a licence for it. He did none of that but converted the money to his own use.

In the second count, he was charged with being absent from work without official leave he having absented himself from 22 January 2013 only to resurface on 8 April 2013 with a fake off sick medical certificate. The Single Officer found the applicant guilty and sentenced to a total of 15 days imprisonment at Chikurubi Detention Barracks.

The applicant's appeal to the Commissioner General was not successful. As a sequel to that, a Board of Inquiry (Suitability) was set up to look into the applicant's suitability to remain in the force. The findings of the Board were that he was unsuitable and recommended his discharge from the force with effect from 25 February 2014. The applicant appealed to the Police Service Commission which sat on 12 February 2015 to hear the appeal. It dismissed the appeal.

The decision of the Commission was communicated to the applicant by letter dated 23 February 2015 delivered at the offices of his legal practitioners which reads in relevant part thus:

> "RE: APPEAL AGAINST DISCHARGE EX-SERGEANT TIGERE K: FORCE NO: 051120P: ZIMBABWE REPUBLIC POLICE
> The above matter refers. Please be advised that on 12 February 2015, the Police Service Commission turned down your appeal against discharge and upheld the Commissioner General of Police's decision to discharge you from the Police Service.
>
> P. SUNGURO (MRS)
> SECRETARY
> POLICE SERVICE COMMISSION"

The applicant appeared to take his fate on the stride because according to the duty roster that has been produced by the respondent, he stopped reporting for duty on 9 March 2015 and has never been seen again. It is however his imminent eviction from state premises which he occupies following notice given to him to vacate by 30 April 2015 which appears to have informed his decision to launch this urgent application seeking what is in effect final relief. He seeks a final order in the following:

> "IT IS ORDERED THAT
> 1. The decision of the respondent to confirm discharge of the applicant from the police service as unsuitable for police duties under ref case 100/13/19/2014 be and is hereby suspended pending the determination of the application for review of the decision filed under case NO. HC 3425/15.
> 2. That costs for this application shall be in the cause upon finalisation of the application for review."

As to how and indeed why the applicant would be entitled to a final order upon an application brought on a certificate of urgency in terms of r 242 (2) (b) of the High Court of

Zimbabwe Rules 1971, an application made in terms of r 244, the applicant does not say. The applicant should have sought interim relief pending the return date of a provisional order.

In his founding affidavit, that applicant has stated that the respondent's decision was communicated to him on 25 February 2015. He has since filed an application for review of that decision in this court in HC 3425/15 and would therefore want the respondent's decision which is in fact a dismissal of his appeal against discharge, suspended pending the finalisation of the review application.

I am not satisfied that this matter passes the test of urgency. By his own admission the applicant was aware of the dismissal of his appeal by the respondent on 25 February 2015. By his own action, he accepted that decision by stopping to report for duty on 9 March 2015. In fact according to Detective Sergeant Major Michael Chasara, it is the applicant who informed his superiors about his discharge on 9 March 2015 before the radio signal to that effect arrived at his base. He thereafter departed only to return on 13 March 2015 to demand that his boss delivers a copy of the radio signal to him at the main entrance to Morris Depot, an untenable situation indeed.

The applicant did not do anything about his discharge and the dismissal of his appeal for exactly 2 months. He was only shaken into action which he realised that he was required to vacate the premises he occupied by virtue of employment only to file this ill-conceived application 6 days before the expiration of the notice to vacate given to him. To me that is self-created urgency.

The applicant cannot expect the court to treat as urgent an application which he himself has not treated as such. It is difficult to resist the conclusion that he has brought this application merely to extend his stay on government property as he clearly does not seem to care much about the job that he has lost. He cannot be allowed to jump the queue for only that reason. His loss of accommodation is the consequence of his discharge from police service and cannot justify the hearing of the matter as urgent.

In the result, it is ordered that;

1. The hearing of the application as urgent is hereby refused.
2. The applicant shall bear the cost of suit.

Messrs Mufadza & Associates, applicant's legal practitioners
Civil Divison of the Attorney General's Office, respondent's legal practitioners