

SHELTON SHANGWA

versus

SENIOR ASSISTANT COMMISSIONER JUSTICE CHENGETA

and

THE BOARD PRESIDENT CHIEF SUPERINTENDENT MASEKERA

and

THE COMMISSIONER GENERAL OF POLICE

HIGH COURT OF ZIMBABWE

ZHOU

HARARE, 30 September 2020

### **Opposed Application**

*B Mutiro*, for the applicant

*J Bhudha*, for the respondent

ZHOU J: This is an application for review in which the applicant seeks the setting aside of his discharge from the Zimbabwe Republic Police. The application is opposed by the respondents.

The facts, which are common cause, are as follows: Applicant appeared before a Board of Inquiry facing charges of misconduct. The Board of Inquiry having found him guilty, recommended that the applicant be issued with a written warning in accordance with the applicable law. The first respondent, queried the recommendation and directed that the Board be reconstituted to reconsider its decision. He communicated this by letter dated 28 July 2015. On 14 August 2015 the Board addressed a letter, to the third respondent reaffirming its earlier recommendation for the applicant to be given a written warning.

In a turn of events which is inexplicable on the papers, on 12 August 2015 the same Board produced a fresh set of findings in terms of which an inconsistent recommendation for the applicant to be discharged from the police was made and purportedly confirmed on 28 August 2015. This recommendation, made in the face of two other recommendations for a written warning to be issued, was made without recourse to the applicant. He was not notified of it. The making of this new recommendation is not only fraught with gross irregularities but

was clearly made contrary to the rule of natural justice known as the *audi alteram partem* rule and to the provisions of the Constitution which demand a fair hearing in a case in which a person's rights are to be adjudicated upon. For this reason, the recommendation and, indeed, the discharge of the applicant which was predicated upon that recommendation, cannot stand. They must be set aside.

In the result, IT IS ORDERED THAT:

1. The discharge of the applicant from the Zimbabwe Republic Police based on the recommendation dated 12 August 2015 and confirmed on 28 August 2015 be and is hereby set aside.
2. The respondents shall pay the costs.

*Rubaya & Chatambudza*, applicant's legal practitioners  
*Civil Division of the Attorney General's Office*, respondent's legal practitioners