

CONSTABLE KATURUZA C
versus
THE COMMISSIONER GENERAL OF POLICE
and
THE POLICE SERVICE COMMISSION

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 1 July 2019 & 8 January 2020

OPPOSED APPLICATION

N Mugiya, for applicant
D Jaricha, for respondents

TAGU J: This is a court application for review. The facts are that the applicant who was a constable in the Zimbabwe Republic Police was charged for contravening Paragraph 35 of the Schedule to the Police Act [*Chapter 11.10*] by the first respondent's trial officer in terms of section 34 (1) of the Police Act. The allegations were that the applicant was charged for leaving the country without the permission of the Commissioner General of Police. He was convicted by a single officer and sentenced to pay a fine of \$5.00 which is the least form of sentence in terms of s 29A of the Police Act.

The applicant submitted that he was surprised in that on the 20th of August 2018 he was called to appear before a board of suitability in terms of Section 50 of the Police Act. This surprised him because a board of suitability can only be convened after a member has at least 3 transgressions in terms of the Police Act especially if that is read together with circular 3 of 2012. According to him a board is convened for a single transgression when the conviction is of a serious nature in which case it must concern dishonesty. In terms of the standing orders Volume 1 and the unrecorded rules Volume 1, the board could only be lawfully convened when the trial officer who would have convicted a member in terms of s 34 (1) of the Police Act would have recommended a board of suitability. This was not the case in this case. He said he was even more shocked on the 3rd of September 2018 when he received a radio for discharge, dismissing him from employment

and no reasons were given. He requested for reasons which were not forth coming. Finally he wrote through his legal practitioners seeking for the reasons but none were furnished. This prompted him to file the present application for review so that the decision of the first respondent could be set aside since his decision amounts to a fatal irregularity since it violated his rights for a fair hearing in terms of Section 69 of the Constitution of Zimbabwe and his right to a fair administrative decision in terms of Section 68 (2) of the Constitution. He now seeks the following relief-

- “1. That the decision of the 1st Respondent to discharge the applicant from the police service without giving written reasons be and is hereby set aside.
2. The 1st Respondent is ordered to reinstate the Applicant into the Police Service forthwith or at least not later than 7 days from the date of this order.
3. The 1st Respondent is ordered to pay costs of suit on a client –attorney scale.”

In their Notice of Opposition the respondents stated that the applicant was not candid with the court. They said whilst it is true that the applicant was charged for contravening paragraph 35 of the schedule to the Police Act [*Chapter 11.10*] when he left the country without the permission of the Provincial Command, the applicant failed to disclose that on his return from Zambia, he was arrested, charged and convicted by the Magistrates Court for contravening section 47 (1) and 48 (2) of the Customs and Excise Act [*Chapter 23.02*]. The applicant’s charge emanated from smuggling of prohibited skin lighting creams and restricted tablets and was sentenced to pay a fine of \$250.00 or 60 days imprisonment. They therefore said what triggered the Board of inquiry (Suitability) was not only the contravention under the Police Act but also the conviction by the Magistrates Court for contravening section 47 (1) and 48(2) of the Customs and Excise Act [*Chapter 23.02*] for which the applicant was sentenced to \$250.00 fine or 60 days imprisonment. Further, they averred that the applicant was served with a notice convening a Board which specified the reasons which was furnished through his erstwhile legal practitioners Pundu and Associates. Lastly, they submitted that they never received any request for reasons for the discharge other than the one received on 8th February 2019 which they replied on the 19th February 2019 and served upon the applicant’s lawyers.

At the hearing of this matter the applicant’s legal practitioner Mr. *N Mugiya* admitted that indeed he received a letter written by one Commissioner of Police T Mutabeni Chief Staff Officer [*Human Resources Administration*] to the Commissioner General of Police dated 19th February

2019. Mr. *Mugiya*, however, insisted that that letter does not amount to reasons and was not furnished by the first respondent hence insisted on the relief the applicant is praying for.

In response counsel for the respondents submitted that reasons were submitted upon request and that in terms of s 50 (3) of the Police Act, the Commissioner General of Police has power to discharge his duties and in terms of s 10 of the Police Act the Commissioner General has the right to delegate some of his functions.

What is clear is that the applicant requested for reasons for his discharge from the Commissioner General of Police through a letter dated the 7th of February 2019. The first respondent furnished the reasons through a letter dated the 19th of February 2019. The letter was written by one T Mutabeni a Commissioner of police on behalf of Commissioner General of Police. The letter reads in part as follows-

“The constituted Board deliberated and recommended your client’s discharge from the Service citing the following reasons:

Your client’s disciplinary record was tainted following his conviction for an offence characterized with elements of dishonesty.

His actions are viewed in a serious light by the Zimbabwe Republic Police and retaining him will have an adverse effect on Police discipline and damage the good image and reputation of the Organization.

Accordingly, the Commissioner General of Police approved your client’s discharge.”

Section 10 of the Police Act reads as follows-

“10 Delegation of Commissioner –General’s functions

Subject to this Act, the Commissioner –General may from time to time delegate to any officer of or above the rank of superintendent any right, functions, power or duty conferred upon him by this Act or any other enactment, other than the power of further delegating the right, function, power or duty so delegated.”

In the present case the court therefore finds that reasons for the applicant’s discharge from the Police Service were duly furnished. Secondly, the reasons were furnished by a lawful delegated officer. Upon receipt of the above reasons there was no reason for the applicant to insist on the relief sought. For these reasons the application is dismissed with costs on a higher scale.

IT IS ORDERED THAT

1. The application is dismissed.
2. The applicant to pay costs on a legal practitioner and client scale.

Mugiya, Macharaga Law Chambers, applicant's legal practitioners
Civil Division of the Attorney General's Office, 1st respondent's legal practitioners