

DHERERAI MANYONI AKA DERECK KOSSAM

Versus

THE POLICE SERVICE COMMISSION

And

THE COMMISSIONER GENERAL OF POLICE

IN THE HIGH COURT OF ZIMBABWE
DUBE-BANDA J
BULAWAYO 20 March 2023 & 23 March 2023

Application for review

The applicant in person
D. Jachira, for the respondents

DUBE-BANDA J

[1] This is an application for review. The applicant seeks an order that his suspension be set aside; that he should not be punished by either a reduction of rank or salary without being given an opportunity to be heard; and that if there are allegations against him a hearing *de novo* must be instituted. The application is opposed.

[2] The applicant filed a founding affidavit and an answering affidavit in support of his application. The respondents in turn filed affidavits in opposition. What is conspicuous about the matter is that the record of proceedings sought to be reviewed is not before court. I raised this issue with the applicant, and he submitted that he has tried since 2015 to get the record of proceedings without any success. He submitted further that the material before court at this point in time is sufficient for this court to review the decision of the second respondent.

[3] It is trite that a review of a decision or proceedings of any inferior court or tribunal is predicated on the proceedings before such court or tribunal. A record of proceedings is important to shed light on what happened or did not happen before such court or tribunal. A court does not review affidavits filed by the parties, but reviews the decision or proceedings as *per* the record of proceedings.

[4] Rule 62(5) of the High Court Rules, 2021 says:

The clerk of the inferior court whose proceedings are being brought on review, or the tribunal, board or officer whose proceedings are brought on review, shall, within twelve days of the date of service of the application for review, lodge with the registrar the original record, together with two typed copies, which copies shall be certified as true and correct copies. The parties to the review requiring copies for their own use shall obtain them from the official who prepared the record:

Provided that it shall be the responsibility of the party seeking review to ensure compliance with this subrule. (My emphasis).

[5] The rule is clear that the record of proceedings sought to be reviewed must be lodged with the registrar of this court. This rule underpins the cardinal importance of the availability of the record of proceedings in a review application. It is important to note that it is the responsibility of the party seeking review to ensure that the record of proceedings has been lodged with the registrar of this court. It is not enough for the applicant to merely say he has tried and failed to get the record of proceedings. This cannot be the answer for the failure to comply with r 62(5). Without prescribing what a litigant who is facing challenges in getting a record of proceedings may do to get such a record, my view is that he may, if so advised litigate to get such a record. This is so because the rule makes it his or her responsibility to ensure the availability of the record of proceedings.

[6] The applicant who appeared without the benefit of legal representation argued that the application is filed in terms section 26 of the High Court Act [Chapter 7:06]. My view is that sections 26, 27 and 28 of the High Court Act deal with the power to review proceedings and decisions; grounds of review; and the court's powers on review respectively. It is r 62 of the High Court rules that speak to the procedure that has to be followed in filing an application for review, and it cannot be by-passed. Put differently, the provisions in the High Court Act speak to substantive law and r 62(5) to procedural law.

[7] My view is that generally the gate way to an application for review is the record of proceedings, without a record of proceedings there can be no review. There would be nothing for the court to predicate its review powers on. A court may not only rely on the mere say so of the parties. I accept that in review applications generally the irregularity does not appear from the record, and it is competent for the parties to travel outside the record to bring extrinsic evidence to prove the irregularity or illegality, but the record must be before the reviewing court. Without the record a court will be dealing with a review in the dark. Generally without

a record of proceedings there can be no review. It is for these reasons that this application is defective and has to be struck off the roll.

In the result, it is ordered as follows:

That this application be and is hereby struck off the roll with no order as to costs.

Civil Division of the Attorney General's Office, respondent's legal practitioners