

MARSHALL REX SIBANDA
versus
MINISTER OF DEFENCE AND WAR VETERANS AFFAIRS
and
WAR VETERANS BOARD

HIGH COURT OF ZIMBABWE
MUCHAWA J

HARARE, 15 and 28 February 2022 & 2 June 2022

Opposed Matter

Mr I Mabulala, for the applicant
Ms A Magunde, for the respondents

MUCHAWA J: This is a court application for a declaratory and enforcement order made in terms of s 14 of the High Court Act, [*Chapter 7:06*]. The applicant seeks confirmation that he is a war veteran as provided for in terms of s 2 of the War Veterans Act, [*Chapter 11:15*] and further that he be awarded all pensions and benefits from the date he was vetted and certified a war veteran and issued with a war veteran's identity card.

The draft order of the applicant is couched as follows;

“IT IS ORDERED THAT: -

1. The applicant be and is hereby confirmed by this Honourable Court to be a war veteran as defined in section 2 of the War Veterans Act [*Chapter 11:15*].
2. The respondents shall within seven days of service of this order upon them, register the applicant on the War Veteran register.
3. The respondents shall pay the applicant all benefits due to him including but not limited to monthly pension, school and college fees and tuition on production of invoices, from the date of his registration as a war veteran in 1997 to date.
4. Should the respondents oppose this application they shall jointly and severally, the one paying the other to be absolved pay the costs of this application.”

The first respondent, the Minister of Defence and War Veterans Affairs has been cited in a representative capacity as the Minister responsible for administering the War Veterans Act. The second respondent is a board established in terms of s 11 of the War Veterans Act whose functions

include the keeping and maintenance of a register of war veterans and their dependents. They also examine and determine any representations by any person relating to the grant, payment or delivery of any benefit of assistance.

Mr *Mabulala* submitted that the applicant was vetted in 1997 and a war veterans' card was issued to him as proof of his successful vetting. Despite this, he claims not to have received the benefits awarded to similarly placed war veterans. It was contended that the applicant meets the definition of a war veteran as set out in s 2 of the War Veterans Act. The applicant alleges to have crossed into Mozambique in 1976 and to have received his military training at Tembwe Training Camp. He claims to have undergone military training and to have participated consistently and persistently in the liberation struggle which occurred in Zimbabwe and the neighboring countries.

A copy of the demobilization card was provided and it appears on p 9 of the record with its card number appearing as 24904. Such demobilization is said to have occurred when the war ended. The applicant claims to have been successfully vetted in 1997 and the resultant card titled "Liberation War Hero" with his particulars appears on p 14 of record. It was submitted that at no stage was the applicant ever advised that he had been unsuccessful in the vetting exercise.

The third document relied on by the applicant is his certificate of service issued by the Zimbabwe Republic Police which appears on p 10 of record. It was submitted that the applicant joined the Zimbabwe Republic Police in 1985 and served for twenty-six years inclusive of five years attributable to previous military service as a ZANU PF trained soldier in terms of Statutory Instrument 53A of 1989 dated 17 March 1989.

In support of the applicant's case is a letter on p 11 of the record written on the 13th of December 1988 to the officer of the Compensation Department by the Secretary for Production Constraction (sic). The letter confirms that the applicant is an ex ZANLA combatant who was in Mozambique from 1976 to 1980.

Another letter appears on p 12 of record. It was written on 28 August 1992 by a Colonel Administration from the Army Headquarters and was addressed to the Commissioner of War Victims Compensation. It confirms that the applicant failed to join the regular force, Zimbabwe National army due to a disability and was demobilized at Chitungwiza.

Mr *Mabulala* also referred to the letter which appears on p 13 of the record which was written in September 1996 to the Pensions office which sought to verify that the applicant is an ex

ZANLA combatant who held the rank of battalion commissar at the time of his injury. A letter dated 11 September 2018 to the Minister of Defence and War Veterans in which the applicant bemoans the various interviews he had been subjected to yet he got no response at all is the last document on record.

In opposition to this application, Ms *Magunde* accepted that the applicant crossed the border for purposes of participating in the liberation war but disputed that he underwent any military training and cannot be considered a war veteran entitled to benefit as he claims. The demobilization card was dismissed as something that was given to all those who had crossed the borders even without undergoing training. The letter From ZANU PF was also said to only prove that the applicant crossed into Mozambique in 1976 and was there till 1980. It was argued that it does not prove that he received military training. The army letter of 28 August 1992 was also said to fall short as it merely said he was demobilized but does not show that he received military training.

Further, it is denied that the applicant was vetted by the War Veterans Board. He is alleged to have been unsuccessful in the mass vetting exercise which was then spearheaded by the Ministry of Social Welfare together with some war veterans appointed to do so by the Government. The respondents relied on an annexure which appears on p 26 of record which they called a rejection register which was admitted to the record upon a written application. The issuance of a War Veterans Identity card is alleged to be an error in the circumstances. Follow up regarding his failure to get the benefits due to war veterans was said to have been explained on account of the applicant's failure to narrate that he had received military training though he had crossed the border with the intention to receive same.

The applicant was advised to await the drafting of a new law which would recognize all other categories of The Veterans of the Liberation Struggle as his case clearly shows that he was a non- combatant cadre.

In response, the applicant insists that he was successful in the initial vetting exercise when the administration of the War Veterans Act was under the Minister of Labour and Social Welfare hence the awarding of the war veterans' card which has not been withdrawn to date nor has he received communication that he was unsuccessful. He claims to have been re- vetted when he complained about not receiving any benefits and he was not given any feedback. The document

on p 26 of the record was questioned as a register as it only has the name Sibanda Marsh and an identity number written at the bottom with the rest being blank.

Mr *Mabulala* argued that the respondents cannot be allowed to unilaterally make a decision not to give the applicant his pension and other benefits without giving him the right to be heard after awarding him the war veterans' card. This was said to be a trampling of his constitutional, legislative and common law right to be heard.

On the other hand, Ms *Magunde* argued that the applicant is not entitled to a *declaratur* as he has not shown that he is an interested person having a substantial and direct interest in the matter as he does not meet the definition of a war veteran as he never received military training at all though he crossed into Mozambique. The documents supplied by the applicant are alleged to be insufficient to prove the applicant's assertions.

In my considered opinion, this matter is to be resolved by determining whether or not the applicant meets the definition of a war veteran as provided in the Act. That is the starting point. Section 2 of the War Veterans Act has the following definition;

“war veteran” means any person who underwent military training and participated, consistently and persistently, in the liberation struggle which occurred in Zimbabwe and in neighbouring countries between the 1st January, 1962, and the 29th February, 1980, in connection with the bringing about of Zimbabwe's independence on the 18th April, 1980.”

From the facts, it is common cause that the applicant crossed into Mozambique in order to join the liberation struggle in 1976. What is to be established is whether or not he underwent military training and thereafter participated consistently and persistently in the liberation struggle.

I start off with the demobilization card. It is not disputed that the applicant was demobilized and got a demobilization card. The definition of “demobilization” is given as follows by the Merriam- Webster Dictionary;

“to discharge from military service, to disband.”

The Cambridge English Dictionary says it means;

“to release someone from armed forces, discharging or disbanding troops.”

In a specialist article titled, “Disarmament, Demobilization and Reintegration- Mapping Issues, Dilemmas and Guiding Principles” by Nicole Ball, Centre for International Policy and Luc

van de Goor, Clingendael Institute demobilization is defined as the formal and controlled discharge of active combatants from armed forces or other armed groups.

Clearly demobilization is the process of standing down a nation's armed forces from combat ready status. When one is demobilized, it is therefore safe to assume that they were part of the armed forces.

The letter from ZANU PF refers to the applicant as a ZANLA ex combatant who went to Mozambique in 1976. The respondents argued that the letter does not prove that he received military training at all. One has to necessarily interrogate the word "ex-combatant".

The Operational Guide to the Integrated Disarmament, Demobilization and Reintegration Standards by the United Nations Interagency Working Group on DDR defines a combatant to include,

"a member of a national army or an irregular military, or a person actively participating in military activities and hostilities."

Ex-Combatant means any combatant who has been disarmed, demobilized, and registered. The letter from ZANU PF therefore implies that the applicant was an active participant in the military activities of ZANLA as part of the military. It supports the applicant's case and the war veterans card issued to him goes to prove that he was then accepted as an ex combatant. The two letters from the army serve to show that the applicant is an ex ZANLA combatant. The September 1996 letter even states the rank he held during the war.

The certificate of service which was issued to the applicant by the Zimbabwe Republic Police states as follows;

"This is to certify that: Marsh Rex Sibanda was appointed in the Zimbabwe Republic Police on the 21st day of October 1985 as a Constable that he served for the period of 26 years and 179 days having 5 years additional attributable to previous military service in terms of the Statutory Instrument 53A of 1989 dated 17 March 1989."

He was even given a Liberation Medal whilst serving in the force.

Section 2 of SI 53A of 1989 provides as follows;

"Notwithstanding any other provisions of these regulations but subject to subsections (4) and (5), an ex-combatant who, on the fixed date, was of an age specified in the first column of the Second Schedule shall be deemed to have participated actively in the liberation struggle as a combatant for the period specified opposite his age in the second column of the Second Schedule, and such participation shall be regarded as pensionable service."

The above clause was applied to the applicant and he was deemed to have actively participated in the liberation struggle as a combatant leading to 5 years being added to his period of service in the force. This too weighs in favour of the applicant's case.

All the respondents did was to deny that the applicant underwent any military training. The assertion that he was not successfully vetted as a war veteran needs to be backed up by some form of communication to the applicant in order to rebut the presumption in applicant's favour which flows from his demobilization and acceptance as a war veteran. His war veterans' card was not withdrawn. The respondents presume that it might have been erroneously issued out but to date it is extant.

In the notice of opposition, the respondents asserted that the applicant was unsuccessful in the vetting leading to his name appearing in the rejection register. This register was not initially attached when the notice of opposition was filed on 3 September 2020. The applicant took issue with this in his answering affidavit of 20 October 2020. This prompted the respondents to then file an extract of the register of rejected war veterans. The applicant objected to this as un-procedural leading to a separate written application being made for the admission of the extract. The extract was duly admitted. Thereafter, the applicant requested a letter from respondent's counsel to enable him to attend at their offices to inspect such register. It is the applicant's evidence that he was attended by one Colonel Shumba who advised him that there were no records held by the Board that showed he appeared in the rejection register. The extract provided by the respondents was disputed in that it was not a register at all as it was blank for the most part except the top column which was headed "Register of Rejected War Veterans 06 November 1999 p 56 of 63. It then provides for the surname, first name and national ID. At the very bottom appears the surname Sibanda, first name Marsh and ID number 44035283M44. The applicant denies knowledge of who Marsh Sibanda is and relies on his identity particulars to show that his correct names are Marshall Rex Sibanda. It is also argued that the war veterans' registration regulations do not make provision for the establishment and maintenance of a rejection register.

Statutory Instrument 194 of 1997 only provides for the establishment of a register of War Veterans. It does not provide for a Rejected War Veterans Register.

At the hearing, Ms *Magunde* tried to produce what she termed the original register for the court to look at. Mr *Mabulala* objected to this on the basis that the new document did not bear any

resemblance to the one already filed on p 26 of record. He also said that the respondent's counsel was trying to be a witness as she had all the time to produce the register with an affidavit from the relevant officials such as Colonel Shumba. Ms *Magunde* prayed that the matter should be referred to trial as a material dispute of fact had emerged. Mr *Mabulala* objected on the basis that the applicant had queried the authenticity of the rejection register as far back as October 2020 as the respondent's counsel had waited for close to one and a half years to raise that issue of a material dispute of fact. He considered this to be a further delaying tactic as the matter had already been postponed four times.

I dismissed the application for the matter to be referred to trial on the basis that the arising dispute was not material to the issue at hand as there were sufficient documents on record to enable the court to determine the matter and cognizant of the need to bring finality to litigation.

I agree with the applicant that the document provided by the respondents is not a register at all. The names alleged to be those of the applicant do not match his. Though the national registration number matches his that is insufficient in the circumstances of this case.

Reliance is placed on the Interpretation Act [*Chapter 1:01*] which provides as follows;

“(1) A certificate alleging the material particulars of anything of an administrative, judicial or executive character done in the exercise of a statutory power or duty shall, if purporting to be signed by the person authorized or required to do such thing, be received in any court, on production by any person and without further proof, as *prima facie* proof of the doing of such thing and of such particulars”

The issuance of the war veteran's card and the ZRP certificate of service make the allegation that the applicant is a war veteran and the issuance of these was done in the exercise of administrative functions. They should be taken as *prima facie* proof of such representation.

Furthermore, there is a presumption of regularity of government documents. BHUNU J (as he then was), when dealing with government documents in the case of *Mhandu v Mushore & Ors* HH 80-11, instructively remarked:

“There is a presumption of validity of a government document regular on its face until it is lawfully invalidated”.

This same position holds squarely in *casu*. The respondents dismally failed to rebut this presumption as I have already shown above.

In terms of the War Veterans (Pension Scheme) Regulations, 1997, SI 280 of 1997, the applicant as a war veteran who underwent military training and participated, consistently and persistently in the liberation struggle which occurred in Zimbabwe and its neighbouring countries between 1 January 1962 and 29 February 1980 is entitled to receive the pension set out in the Statutory Instrument. He is also entitled to the benefits set out in the War Veterans (Benefits Scheme) Regulations, 1997, Statutory Instrument 281 of 1997.

I have no choice but to grant the application on the following terms;

IT IS ORDERED THAT: -

1. The applicant be and is hereby confirmed by this Honourable Court to be a war veteran as defined in s 2 of the War Veterans Act [*Chapter 11:15*].
2. The respondents shall within seven days of service of this order upon them, register the applicant on the War Veteran register.
3. The respondents shall pay the applicant all benefits due to him including but not limited to monthly pension, school and college fees and tuition on production of invoices, from the date of his registration as a war veteran in 1997 to date.
4. Respondents to pay costs.

Mabulala & Dembure applicant's legal practitioners
Civil Division of the Attorney General's Office, respondents' legal practitioners