

VIRGINIA ZIMUNYA
versus
DISTRICT MEDICAL OFFICER –MARONDERA N.O
and
HEALTH SERVICE BOARD

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 20 & 27 October 2021

Urgent Chamber Application

L. Makumbe, for applicant
N.Chiro with *W. Matsika*, for respondents

TAGU J: This is an urgent chamber application for a temporary interdict.

The background facts are that the applicant is a war veteran of the liberation struggle and is employed by second respondent as a health professional and nurse stationed at Chimbwanda Rural Clinic. She has served in that capacity for forty (40) years now. Since 2015 she has been subjected to a series of disciplinary hearings by the officials from the first respondent. This saw her being transferred from Chimbwanda Rural Clinic to Chihota Rural Clinic. According to her the unfolding and unfounded allegations are being raised as a form of victimization based on her political affiliation with the ruling party, ZANU PF as well as her status as a war veteran. Despite several grievance reports which she wrote to the first respondent and the Deputy Minister of the Ministry of Health and Child Welfare these were never responded to. What jolted her to file the present application is that on the 11th of October 2021 she was served with yet another copy of a charge letter inviting her to a disciplinary hearing on similar charges she faced before. The hearing was set for the 15th of October 2021.

She is now praying for a Provisional Order couched in the following terms-

“TERMS OF FINAL ORDER SOUGHT

That you show cause to this Honourable Court why a final order should not be made in the following terms-

1. The Respondent be and is hereby barred, stopped and interdicted from conducting the disciplinary hearing proceedings against the Applicant under Statutory Instrument 15 of 2006.

2. The Respondent be and is hereby ordered to charge and discipline the Applicant under the Health Services Regulations 2006, S.I. 117/2006.
3. The Respondent to pay costs of suit on an attorney and client scale.

INTERIM RELIEF GRANTED

Pending determination of this matter, the Applicant is granted the following relief

1. The Respondent be and is hereby barred, stopped and interdicted from conducting the disciplinary hearing proceedings, scheduled for the 15th of October 2021, against the Applicant under Statutory Instrument 15 of 2006.
2. The Respondent to pay costs of suit on an Attorney and client scale.

SERVICE OF THE PROVISIONAL ORDER

Applicant's Legal Practitioners Messrs Kadzere, Hungwe and Mandevere be and are hereby granted leave to serve this Provisional Order on the Respondents.”

The application is opposed by the respondents.

In their Notice of Opposition filed of record the respondents submitted that the Applicant was correctly found guilty on the charges and she never appealed against those decisions which confirms that she was satisfied with the correctness of the decisions. They said the Applicant is abusing court process and the hearing has to be conducted and if she has genuine concerns on the manner the hearing will be conducted, the law provides sufficient remedies of an appeal or review. She therefore must attend the hearing and raise the issue of wrong procedure if any, before the Disciplinary Authority who will make a ruling. Further they submitted that the Applicant has remedies as provided for in the Labour Act. They denied any victimization.

In her oral submissions on behalf of the applicant, *L. Makumbe* submitted that the Applicant is not refusing to be subjected to disciplinary hearings, but averred that she must be charged under the correct Regulations that are applicable to her.

What came out clearly from the tone of the respondents' Notice of Opposition and the Applicant's founding affidavit is that it is indeed correct that the Applicant has been subjected to series of disciplinary hearings before, some of the charges relate to her absconding work. She has raised these with the relevant authorities but no response is forth coming. It may be that the Applicant is a nuisance to the organization mainly because she thinks as a war veteran nothing can happen to her. However, I did not hear the respondents to explain satisfactorily why they are charging the Applicant under Statutory Instrument 15 of 2006 instead of the Health Services Regulations 2006, S.I. 117/2006. Applicant is a nurse duly employed by the second respondent. She is not employed in the private sector. S.I. 15 of 2006, the National Code of employment under which the Applicant has been suspended on and called for a disciplinary hearing does not apply to

her. She is governed by the Health Service Regulations 2006, S.I. 117/2006. If it applies arguments will be made during confirmation or discharge of the Provisional Order.

For one to succeed in an application of this nature one has to establish the following

- (1) That she has a *prima facie* right;
- (2) That she suffered actual injury or have a reasonable apprehension of injury;
- (3) That there is no other remedy available to her offering similar or better protection than the one sought;
- (4) That the harm suffered or reasonably apprehended is of an irreparable nature;
- (5) That the balance of convenience favours the granting of the order sought.

All the factors listed above have been satisfied in this case. The relief sought is therefore inevitable. However, before I conclude there is one observation that I need to make. The Applicant is seeking a temporary interdict to stop the hearing set for the 15th of October 2021. This application was filed on the 14th of October 2021, a day before the hearing. The file was referred to me on the 15th October 2021, the day the hearing was to take place. I received the file on the 19th of October 2021. I immediately set it down for hearing today the 20th of October 2021. I enquired from the counsel for the Applicant if the hearing has been held already or not to ascertain if the application has not been overtaken by events. Counsel for the Applicant assured me that the hearing has not been conducted and Applicant was coming from her work place.

However, counsels for the Respondents told the court that the hearing has already been conducted and the Applicant is waiting to be served with the findings of the Disciplinary Authority. It was not clear as to who was telling the truth. If indeed the hearing has taken place then there is need to amend the provisional order to cater for that situation.

The High Court Rules, 2021, Statutory Instrument 202 of 2021 provides as follows-

“(27) At the conclusion of the hearing or thereafter, the court-

- (a) may refuse the application, or
- (b) may grant the order applied for including a provisional order, or any variation of such order or provisional order whether not general or other relief has been asked for, and may make such order as to costs as it considers fit.”

It is on the authority of the rules that this court is empowered to make any variations it deems fit to the order being sought.

IT IS ORDERED THAT

TERMS OF FINAL ORDER SOUGHT

That you show cause to this Honourable Court why a final order should not be made in the following terms-

1. The Respondents be and are hereby barred, stopped and interdicted from conducting the disciplinary hearing proceedings against the Applicant under Statutory Instrument 15 of 2006.
2. The Respondents be and is hereby ordered to charge and discipline the Applicant under then Health Service Regulations 2006, S.I. 117/2006.
3. The Respondents to pay costs of suit on an Attorney and client scale.

INTERIM RELIEF GRANTED

Pending determination of this matter, the Applicant is granted the following relief

1. The Respondents be and are hereby barred, interdicted and stopped from conducting the impending disciplinary hearing proceedings scheduled for the 15th of October 2021, against the Applicant under Statutory Instrument 15 Of 2006.
2. If the hearing has already taken place the Respondents are interdicted from serving the Applicant with the findings of the Disciplinary Authority.
3. There is no order as to costs.

Kadzere, Hungwe & Mandevere, applicant's legal practitioners.

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