

MAJURY MADORI
versus
MINISTER OF HIGHER AND TERTIARY EDUCATION,
INNOVATION, SCIENCE AND TECHNOLOGY DEVELOPMENT

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 11 October 2021

URGENT CHAMBER APPLICATION

Ms *M. Karimanzira* with Mrs *M. Mandingwa* for the Applicant.
N. Muchinguri with Ms *M. Makuvire* for Respondent.

MUZENDA J: This is an urgent Chamber Application for stay of execution of an administrative decision made by the respondent to transfer and demote applicant pending review of the same by this court where the applicant is seeking the following relief:

“INTERIM RELIEF GRANTED

Pending finalisation of this matter an interim order is hereby granted in the following terms:

(a) Pending the return date, the respondent be and is hereby ordered to stay the execution of the administration decision pending the finalisation of the review under case number HC 210/21.”

The respondent is opposed to the applicant and did not file any opposing papers. Respondent submitted that the application did not cite the Public Service Commission and that misjoinder should paralyse the chamber application. On the merits the respondent contended that the offensive letter written by the respondent does not constitute transfer and in any case it was added applicant still has an opportunity to contest the transfer. Respondent added that the letter which is the cause of action came as a result of an audit anomaly attributable to applicant, however respondent was not in a position to avail the audit to court.

BACKGROUND

The applicant is employed at Mutare Teacher’s College as a Head of Department and as an accountant. She has been with respondent for seventeen years. On 4 October 2021 she

was served with a letter authored by Mr T Pasipamire, the Secretary of respondent speaking of “lateral transfer from Mutare Teachers’ College to Masvingo Teachers College” on the basis of the following reasons:

“The Secretary has noted that some institutions are not submitting financial returns as required. As the Head of Department at Mutare Teachers College you have not submitted the required returns. These returns were to be submitted to Treasury Parliament and Office of the President and cabinet monthly and quarterly. In view of your failure to comply with these standing instructions you are being assigned lesser responsibilities than that of Head of Department with immediate effect and transferred to another institution.

You are required to fill the Intra-Ministerial Transfer Forms with immediate effect and submit to this office for onward submission to the Public Service Commission for approval.”

Upon receipt of this letter, applicant instantly filed an application for review contending that the decision by respondent to transfer and demote her is grossly irregular in that it is arbitrary since applicant was not given an opportunity to be heard before the decision was taken. She also attacked the decision as procedurally and substantively unfair and that it violates s 68 of the Constitution of Zimbabwe relating to the applicant’s right to administrative justice and in this case respondent is relying only on one side of the story.

Whilst waiting for the application for review to be heard, the applicant then brought on urgent basis this application for stay of execution putting the transfer process to a temporary halt.

Respondent submitted that applicant erred or committed a misjoinder by failing to cite Public Service Commission. The letter received by the applicant on 4 October 2021 was not copied to Public Service Commission. If Public Service Commission will get to know about the letter pertaining to applicant’s transfer that would be coming from the applicant when she will be completing intra-ministerial forms dealing with her transfer. Public Service Commission is not the one seeking transfer of the applicant, it is the respondent. Public Service Commission only ascends to the requested transfer and does not initiate it. Apparently in this case it is the respondent which is initiating the transfer and not Public Service Commission nor the applicant. In my view, there was no need for the applicant to join Public Service Commission to the proceedings. In any case r 321(11) of High Court Rules 2021, SI 202 of 2021 is very clear in providing that “no cause or matter shall be defeated by reason of the misjoinder or non-joinder of any party.” On that basis the preliminary point has no legal basis and it is dismissed.

On the merits of the application being sought, it is trite that an application for an interlocutory interdict must show a right which is being infringed or which he or she

apprehends will be infringed. The court has to decide in its discretion, whether or not to grant a temporary interdict. In the exercise of this discretion, it must be satisfied that applicant has proved an actual or well-grounded apprehension of irreparable loss if no interdict is granted and the court must have regard to the balance of convenience. The balance of convenience becomes relevant only when a *prima facie* ground for an interdict has been established. (*Genzel Mining (Private) Limited v Mr J Mpofu and 2 Others* HB 239/18).

It is clearly apparent that the respondent did not file any documents to prove that due process was done before the transfer letter was written. No documents were produced by the respondent to show that an audit exists showing anomalies created by the applicant. The respondent has placed the burden of facilitating her own transfer on the applicant. Applicant has already filed an application for review before this court.

I am satisfied that applicant has established all the necessary requisites to seek a temporary interdict and maintain a status *a quo ante* by freezing the position of initiating transfer of applicant until the application for review is dispensed with.

Accordingly the following interim relief is granted:

“Pending finalisation of the Review matter under HC210/21 the respondent be and is hereby ordered to stay the execution of the administrative decision of facilitating the transfer of applicant from Mutare to Masvingo Teachers’ College.”

Mhungu & Associates, applicant’s legal practitioners

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