

**DHERERAI MANYONI**

**VERSUS**

**COMMISSIONER GENERAL OF POLICE**

**AND**

**CHIEF SUPERINTENDENT KUNENE**

**AND**

**CO-MINISTERS OF HOME AFFAIRS**

IN THE HIGH COURT OF ZIMBABWE

MOYO J

BULAWAYO 25 OCTOBER 2013 AND 13 FEBRUARY 2014

Opposed matter

**MOYO J:** This is an application for review of the decision of the 1<sup>st</sup> Respondent (the trial officer) to convict the Applicant on 2 counts for allegedly contravening paragraph 35 of the Schedule to the Police Act, [Chapter 11:10] for “acting in an unbecoming or disorderly manner or in any manner prejudicial to good order or discipline or reasonably likely to bring discredit to the Police Force.”

The Applicant is also aggrieved by the decision of the Commissioner General of Police on appeal wherein he upheld the decision of the trial officer.

The grounds upon which Applicant seeks this court to review the 1<sup>st</sup> and 2<sup>nd</sup> Respondents’ decisions are those which delve into the merits of the case. The Applicant is complaining about the non production of exhibits, admission of evidence from witnesses without proof beyond a reasonable doubt, admission of contradictory evidence, the calling of some witnesses and leaving out some other witnesses that Applicant considered were key witnesses in the matter. Applicant is also complaining of the fact that the trial officer threw out his defence without merit.

All these reasons, despite the fact that they are not concise, they relate to the merits of the matter and can therefore not be the subject matter of a review but an appeal.

On appeal, the Commissioner could have interfered with the decision of the trial officer, if he was of the view that the factual findings of the trial officer defied logic.

The assessment of evidence remains the dominion of the trial court for the simple reason

that the trial officer lives through the drama of the case and is better placed to determine the factual issues as well as issues of credibility.

The Commissioner on appeal, could only have interfered with the findings of the trial officer if he was satisfied that his (the trial officer) findings defied reason and common sense. There has to be something grossly irregular in the proceedings to warrant such interference. This court has wide review powers given to it in terms of Section 26 and 27 of the High Court Act, [Chapter 7:06]

Section 27 of the High Court Act, *supra*, provides thus:-

- (1) Subject to this Act and any other law, the grounds on which any proceedings or decision may be brought on review before the High Court shall be –
  - (a) absence of jurisdiction on the part of the court, tribunal or authority concerned,
  - (b) interest in the cause, bias, malice, or corruption on the part of the person presiding over the court or tribunal concerned or on the part of the authority concerned, as the case may be,
  - (c) gross irregularity in the proceedings

The grounds for review as stated in the application are not the ones envisaged by Section 27 of the High Court Act, *supra*. If the applicant wants a revisit into the merits of the case, the credibility or otherwise of the witnesses, the assessment of the probative value of the evidence that was presented before the tribunal, then his remedy is by way of appeal not a review. On the appeal route though the decision of the Commissioner General of the Police is not appealable to this court in terms of the Police Act [Chapter 11:10] as read with Section 34(1) of the High Court Act [Chapter 7:06]. On review it is not enough to simply contend that the decision was wrong, special grounds must exist before a court will enquire into the merits. Refer to *Makoni v Liquor Licencing Board* 174(2) RLR 1, *Quintas v Controller of Customs and Excise* 1976(1) RLR 208 and *Ministry of Labour Manpower Planning and Social Welfare and others v Pen Transport Pvt Ltd* SC 45/89. No such special grounds have been exhibited in this application warranting an interference with the Respondent's decision on the merits. I accordingly find no basis upon which I can exercise my review powers in this case.

The application is accordingly dismissed with costs.