

**ASHTON KASIRORI**

**VERSUS**

**COMMISSIONER GENERAL OF POLICE**

**AND**

**SUPERINTENDENT MURINGA**

**AND**

**SUPERINTENDENT MAPIYE**

**AND**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
MOYO J  
BULAWAYO 27 JANUARY AND 20 FEBRUARY 2014

Applicant in person  
Mr *Marecha* for the respondents

Urgent chamber application

**MOYO J:** In this matter the applicant seeks a provisional order in the following terms:

Interim Relief

The Respondents be and are hereby interdicted from convening a Suitability Board hearing against the Applicant on the 13<sup>th</sup> of January 2014 pending the finalisation of this review application under case number HCR 47/14.

The terms of the final order sought are couched in the following terms:-

“That the provisional order granted by this Honourable Court be confirmed in the following manner:

1. That pending the final determination of this review court application, Applicant must continue carrying out his police duties as normal.

The facts of the case are that Applicant was charged and convicted of contravening paragraph 3 of the Schedule to the Police Act [Chapter 11:10] for “Acting in an unbecoming manner or in any manner prejudicial to good order or discipline or reasonably likely to bring discredit to the police force.”

This was on the 10<sup>th</sup> of January 2012. The Applicant was again charged on the same Section in an unrelated incident and was convicted on 3 December 2012. The Applicant avers that he was never given the record of proceedings in both instances.

The Applicant apparently then sat back and did nothing until 10 January 2014 whereupon service of a notice to appear before a board to determine his suitability in the police force in terms of Section 50 of the Police Act [Chapter 11:10], he then launched simultaneously an application for review in HC 47/14, an application for condonation of the late application for review in HC 44/14, and this urgent chamber application.

It is the convening of the suitability board that the applicant now seeks to stay pending the finalisation of the review matter in HC 47/14.

From applicant’s own conduct it is clear as submitted by the Respondent’s Counsel, that he did not do anything about his situation from the 10<sup>th</sup> of January 2012, 2 years ago until when he was summoned to appear before the board of officers. That is when applicant then decided to launch an application for review, for condonation and a temporary interdict against the board of officers pending the determination of his application. One can therefore not find any urgency in this matter. Applicant sat back and did nothing for 2 years and only sprang up to act in a bid to avoid appearing before the suitability board.

I find that there is no urgency at all in this matter.

Refer to *Kuvarega v Registrar General and Another* 1998 (1) ZLR 188 (H) per CHATIKOBOJ (as he then was) wherein he stated that:-

“What constitutes urgency is not only the imminent arrival of the day of reckoning; a matter is urgent, if at the time the need to act arises, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the deadline draws near is not the type of urgency contemplated by the rules. It necessarily follows that the certificate or urgency or the supporting affidavit must always contain an explanation of the non-timeous action if there has been delay.”

In this case the applicant was convicted in terms of the Police Act [Chapter 11:10] more

than 2 years ago on the first count and more than a year ago on the second count. He served the sentences imposed after his appeal to the first Respondent was unsuccessful. He later sat back and did nothing, the convening of the board of suitability is the only thing that sprang him into action. He had 2 years to act on the first count and 1 year to act on the second count, he sat back and did nothing.

I accordingly find that this application is not urgent for the aforestated reasons and I accordingly dismiss it with costs.

*Civil Division, Attorney General's Office, respondents' legal practitioners*