

CONSTABLE CHIRERE T.N. 057119 K

Versus

THE TRIAL OFFICER (SUPERINTENDENT GUDO)

And

THE COMMISSIONER GENERAL OF POLICE

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 1, 12 & 15 JUNE & 6 JULY 2017

Court Application for Review

N. Mugiya for applicant
L. Musika for respondents

KAMOCHA J: In this application the grounds for review were as follows:

- “(1) The trial proceedings by the 1st respondent are grossly irregular in so far as the 1st respondent fails to give a ruling to the exception made and allowing the trial prosecutor to do so on his behalf.
- (2) The 1st respondent had no jurisdiction to charge and try the applicant in terms of the law.”

The applicant sought for the following relief:-

- “(1) The trial proceedings against the applicant presided over by the 1st respondent be and are hereby set aside.
- (2) The respondents are ordered to pay costs of suit.”

The applicant who is a constable in the Zimbabwe Republic Police appeared before Superintendent Ndebele Mhambi facing a charge of contravening paragraph 34(1) of the schedule to the Police Act [Chapter 11:10] as read with section 29 and 34 of the said Act.

“Omitting or neglecting to perform any duty or performing any duty in any improper manner.”

Alternatively

Contravening paragraph 11 of the Schedule to the Police Act [Chapter 11:10] as read with section 29 and 34 “Without good and sufficient cause disobeying or refusing or omitting or neglecting to carry out a lawful order written or otherwise.”

When the matter was being heard the applicant exercised his right to plead and except together in terms of section 180 (4) of the Criminal Procedure and Evidence Act [Chapter 9:07].

The applicant’s legal representative addressed the presiding officer at some length. The prosecutor also made written submissions in respect of the exception at some length. The submissions were quite detailed.

After considering the submissions by both counsel the presiding officer ruled that he had been persuaded by the submissions made by the public prosecutor. Consequently the exception was dismissed and the charge was to stand and trial to continue.

The fact that the court preferred the public prosecutor’s submissions to those of the applicant does not mean that the court did not make a ruling. A ruling was made but was against the applicant. It is not correct to say that any ruling that is not in favour of a party is not a ruling.

If the applicant needed written reasons for an interlocutory ruling he should have requested for them. The applicant’s assertion that the trial officer did not give a ruling to the exception made and allowed the public prosecutor to do so on his behalf is untenable and without merit.

The second complaint of the applicant was that the trial officer who is a superintendent had no jurisdiction to charge and try him in terms of the law.

The applicant is a constable who should be tried in terms of the provisions of section 34 of the Police Act [Chapter 11:10] which recite thus:-

“34 Trial before court consisting of one officer

- (1) A member, other than an officer, who is charged with contravention of this Act or any order made thereunder or any offence specified in the schedule may be tried by an officer of or above the rank of superintendent and sentenced to any punishment referred to in paragraph (d) of subsection (2) of section twenty-nine.”

The applicant is a member whose rank is that of constable. He is not an officer. He can be tried by a court consisting of one officer who is of a rank of superintendent or above.

That applicant’s ground for review is also devoid of any merit whatsoever and is *ipso facto* dismissed.

In the result this application for review is dismissed with costs.

Mugiya & Macharaga Law Chambers, applicant’s legal practitioners
Attorney General’s Office Civil Division, respondents’ legal practitioners