

TERENCE CHIRAU  
versus  
THE TRIAL OFFICER (SUPERINTENDENT SIBANDA)  
and  
THE COMMISSIONER GENERAL  
and  
THE POLICE SERVICE COMMISSION  
and  
THE CO MINISTER OF HOMEAFFAIRS  
and  
THE CIVIL DIVISION – ATTORNEY GENERAL

HIGH COURT OF ZIMBABWE  
MTSHIYA J  
HARARE, 27 June 2014 and 10 September 2014

### **Opposed Matter**

*B. Chidenga*, for the applicant  
*Ms K. Warinda*, for the respondent

MTSHIYA J: On 21 January 2013, the applicant filed this application seeking the following relief:-

- “1. The Proceedings leading to the conviction, sentence and subsequent discharge of the Applicant by the 11st and 2<sup>nd</sup> Respondent be and is hereby quashed.
2. A verdict of not guilty is retained in favour of the Applicant.
3. The Respondents are hereby ordered to pay costs of suit on a client-attorney scale.”

It is common cause that the applicant, prior to his discharge on 16 November 2012, was a sergeant in the Zimbabwe Republic Police. The applicant was dismissed following a decision of the Board of Suitability (The Board) which found him unsuitable for duty as a police officer. Although the applicant admits having at one stage been tried for the offence of

“leaving point of guard,” he disputes that the Board’s decision was based on that fact. The applicant, however, “forgot” to make the Boards’ record/report, part of his application. I make this observation because an application of this nature is based on papers.

Despite failure to file the Board’s report the applicant proceeds to list his grounds of review as follows:-

- “17.1 The trial was conducted in an unfair manner and against the principles of natural justice.
- 17.2 I was not given adequate notice.
- 17.3 I was not given an opportunity to be represented.
- 17.4 There is no record of proceedings for all the stages leading to my dismissal.
- 17.5 The reasons for the dismissal were not given.
- 17.6 I was punished for the wrong offence since the offence I was tried and convicted of albeit illegally does not carry such a heavy penalty as dismissal, so I am being punished for an offence I do not know and I was never tried for.
- 17.7 The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents acted on papers that I never saw and I was never given an opportunity to oppose. Hence upholding a conviction that was bad at law and which was arrived at through a gross misdirection.”

In its opposing papers, the respondent, apart from objecting to the relief sought, also states:-

“Records of the trial and Board of Inquiry (Suitability) are available in Applicant’s record of service. They can be made available on the directive of this Honourable Court.”

It cannot therefore be correct to allege that there are no records of the Board. The decision being challenged is in the Board’s records.

For reasons not stated, there was indeed no voluntary surrender of the records. However, let me hasten to say the rules of this court permit the applicant to seek an order compelling the discovery of the said record(s). That was not done and I do not believe that it would have been proper for the court to issue a compelling order without an application being made.

Apart from the issue of joinder raised by the respondent and the fact that the relief sought is incompetent, I am, indeed disabled from considering the review application on the basis that the applicant has not deemed it necessary to place before me the record of the proceedings which he wants to be set aside for procedural irregularities. The court cannot rely on his say so.

As from 21 January 2012 up to 27 June 2014, the applicant was fully aware that the respondent had not supplied him with the papers he wanted to rely on. Despite the rules of this court permitting him to compel discovery/production of documents, he did not avail himself the opportunity.

A review or appeal is generally based on papers and accordingly without the papers, *in casu*, there can be no basis for review or appeal. In the absence of the Board's record/report there is nothing upon which this court can base a review process. On that ground alone, this application ought to be dismissed.

The application is dismissed with costs.

*Messrs James Musiya Legal Practitioners, Applicant's Legal Practitioners*  
*The Attorney General – Civil Division, Respondent's Legal Practitioners*