

CONSTABLE MBAIMBAI
versus
THE BOARD OF PRESIDENT (CHIEF SUPERITENDANT MEKI)
and
THE COMMISSIONER GENERAL OF POLICE
and
THE POLICE SERVICE COMMISSION

HIGH COURT OF ZIMBABWE
MAKONI J
HARARE, 15 March 2018 and 22 January 2020

Opposed Application

N Mugiya, for the applicant
Ms P. M Mutsvanga, for the respondent

MAKONI J: The applicant approached the court seeking a review of the decision of the second respondent. The relief sought was couched in the following terms:-

- “1. The discharge of the applicant from the Police Service by the 2nd Respondent be and is hereby held to be unlawful and wrongful.
2. The 2nd Respondent’s failure to comply with the provisions of section 52 of the Police Act is held unlawful and wrongful.
3. The 3rd respondent is ordered to stay the process of the Appeal in terms of section 51 of the Police Act until the 2nd Respondent reinstates the Applicant into the Police Service without loss of salary or benefits.
4. The second respondent is ordered to reinstate the applicant into the police Service forthwith or at least not later than 72 hours from the date of this order.
5. The 1st and 2nd Respondents are ordered to pay costs of suit on a client-attorney scale.”

His grounds for review were as follows:

- “(1) The first and second respondents conducted proceedings in a grossly irregular manner.
- (2) The first and second respondents were biased against the applicant in the manner they disclosed the matter.”

His basis for seeking the relief was that he was discharged without a Suitability Board being convened in terms of a 80 of the Police Act Cap 11.30 (the Act). He was not given reasons why he was discharged. He appealed against the decision in terms of s 51 of the Act to the third respondent

but the second respondent did not reinstate him as is provided for in terms of the law. His discharge was therefore unlawful and wrongful.

All respondents were served with the court application. The first and third respondent did not file opposing papers. The second respondent opposed the application and was served with the applicant's Heads of Argument on 28 July 2017. It only filed its Heads of Argument on 15 September 2017. All the respondents were, therefore barred.

Ms *Mutsaga* failed to take advantage of the rules of the High Court Rules 1971 (the rules) to make an ordinary application for condonation in respect of the second respondent. The second respondent remained barred.

With the respondents being barred I proceeded to deal with the matter on the merits in terms of rule 238(2b). I declined to grant the application for the following reasons.

The relief being sought by the applicant in paras 2, 3 and 4 had no bearing at all to the grounds of review and is not related to in the founding affidavit. A cursory reference is made in para 11.3 of the founding affidavit where he states that he appealed to the 3rd respondent in terms of s51 of the Act but the 2nd respondent has not reinstated him. No factual basis is set out neither are details given of why the second respondent should have re-instated the applicant.

Regarding the relief in para 1 the founding affidavit, does not expand on the grounds of review. Was the applicant putting in issue the manner in which first and second respondent conducted certain proceedings. If so which proceeding? From the papers, it appears that it was the first respondent who was tasked with convening a Suitability Board and not both the first and second respondents. In any event, the applicant's affidavit is not clear on how the first respondent conducted the proceedings in a grossly irregular manner and how he or she was biased against the applicant.

I formed the view that the papers were hurriedly bundled together and filed without much thought as to what remedies were available to the applicant and what would be the appropriate application to file.

In view of that, I will dismiss the application with no order as to costs since the respondents were barred.

In the result I will make the following order.

1. The application is dismissed with no order as to costs.

Mugiya and Macharaga Law Chambers, applicant's legal practitioners