STEPHEN NDLOVU

VERSUS

THE OFFICER COMMANDING
ZIMBABWE REPUBLIC POLICE, BULAWAYO PROVINCE

AND

THE COMMISSIONER GENERAL

AND

CO-MINISTER OF HOME AFFIARS

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 30 APRIL 2010 AND 9 SEPTEMBER 2010

Mr. N. Siphuma for applicant
Mr. T. Hove for 1st -3rd respondents

Stay of Execution

CHEDA J: This is an application for a stay of execution of a sentence pending review.

The genesis of this matter is that, applicant is a member of the Police force and is based at Bulawayo Central Traffic and is attached to the VID section.

On the 14th January 2010 applicant was charged with contravening paragraph 35 of the schedule of the Police Act [Chapter 11:10] on allegations that he had acted in an unbecoming manner. The matter was set down before a hearing officer who convicted him on the 28th

January 2010 and sentenced him to 7 days imprisonment at Zimbabwe Republic Police, Fairbridge Detention Barracks, here in Bulawayo. He appealed that decision but the appeal was dismissed by second Respondent on the 9th March 2010.

In pursuit of his legal right, applicant filed an application for review on the 16th April 2010 under cover of case number HC 694/10 simultaneously with this application which he seeks to stay the execution of the sentenced imposed on him.

It is applicant's argument that if he serves his sentence before the review application is heard, he will be seriously prejudiced in the event that his application succeeds.

Respondents are opposed to this application on the basis that applicant had used a wrong procedure earlier on when he noted an appeal. While this maybe so, the current issue is that of an application for review pending before this court.

The question, then is what effect would the result of the review have on the whole matter.

Generally, all litigants are expected to await the finalisation of a matter before the court. Therefore any affected party has reason to worry when the other party is showing indications of a desire to execute before the pending matter is finalised.

In the determination of an interdict, one of the considerations a court will bear in mind is the harm which may flow from its failure to stop or allow a certain occurrence.

In *casu* applicant has a 7 day sentence hanging on him. If respondent is allowed to execute and he succeeds in his application for review, the harm which he will suffer is clearly irreparable. While on the other hand respondents will still enforce the sentence imposed in the

event that the review application fails. Therefore, there is an adequate remedy for respondents.

This, is the mischief which the principle of interdict is hell-bent to prevent. Respondent have argued that, the application for review is likely to fail.

Well, they may well be correct in their stance on the basis of whatever arguments. However, this court is not seized with that matter and is yet to be determined. What this court is concerned with is the damage which may occur later and whether or not applicant will have any other alternative remedy. If applicant succeeds in his review application he will indeed suffer irreparable harm in the circumstances.

In my mind, I hold that applicant's argument is plausible. In the event that he serves his sentence and only to succeed in his application for review later, he will no doubt have suffered irreparable harm to which no meaningful alternative will cure the harm even if it is of a financial nature.

I am of the view that there is no prejudice if both parties await the outcome of the review currently before the courts

In the result, the application succeeds.

Sansole and Senda, applicant's legal practitioners
Civil Division, *Attorney General's Office*, respondent's legal practitioners