

NQOBANI SITHOLE

Versus

**SENIOR ASSISTANT COMMISSIONER -
OFFICER COMMANDING POLICE - MAT. SOUTH PROVINCE -
N. SIBANDA**

And

COMMISSIONER GENERAL OF POLICE

And

THE MINISTER OF HOME AFFAIRS

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 4 JANUARY AND 23 APRIL 2010

S S Mlaudzi for applicant
T Hove for all the respondents

Chamber Application

NDOU J: I dismissed this application with costs. The applicant seeks full reasons for the dismissal. These are they.

The applicant approached this court under a certificate of urgency seeking a provisional order in the following terms:

“Interim Relief granted

1. That the transfer of applicant to Murewa be suspended until this application is finalized.
2. That if applicant is already in Murewa he be returned to Beitbridge until the application is finalized.

Final Order

1. That the transfer of applicant to Murewa be and is hereby reversed.

2. That the respondents reconsider recommendations and adoption [of] the applicant's transfer from Ministry of Home Affairs to Ministry of Justice and Legal Affairs respectively.
3. That if the respondents oppose the application, costs on a client attorney be ordered against the officer that opposes personally."

The salient facts of the matter are the following. The applicant is a police officer holding the rank of Assistant Inspector. For a period of around six (6) years the applicant had been seconded to the Beitbridge Public Prosecutor's office as a public prosecutor. During this period he studied for a law degree through distance education via the University of South Africa. He made quite some progress towards the attainment of his law degree. This encouraged him to seek a permanent transfer to the Ministry of Justice and Legal Affairs. Whilst his application for lateral transfer was under consideration, he was transferred from the Public Prosecutor's office to the Zimbabwe Republic Police. He suspects that one of the magistrates in Beitbridge authored the termination of his secondment. His secondment was terminated on 26 June 2009. In July 2009 the applicant went on vacation leave and was due to report back in September 2009. He did not do so. He states that he fell ill and was on sick leave until 30 November 2009. Whilst he was on sick leave he was transferred to Murewa. He was also arrested for being absent without official leave. He was detained for three days at Beitbridge Police cells. He was taken to Murewa where he was released without charge. He thereafter made his own investigations and he managed, somehow to lay his hands to a memorandum written by the 1st respondent to the 2nd respondent recommending his transfer. The applicant does not explain how he managed to get a copy of this memorandum. Having read the contents of this memorandum he decided to institute this chamber applicant. It seems to me that the application is seriously flawed. The final order sought is a review of the decision by the Commissioner General of Police to transfer him to Murewa.

In terms of order 33 Rule 256 of the High Court Rules, 1971, an application for review should be by way of court application and not chamber application. In any event the application does not meet the requirements set out in Rules 257 and 260. Be that as it may, I do not propose to dismiss the application for the use of wrong procedure. The respondents raised two points *in limine*.

First, they alleged that the matter is not urgent at all. In his founding affidavit, the applicant has not dealt with the question of urgency seriously. All he states is: "My right to education is being infringed by the transfer to Murewa in that all my studies will be affected adversely. The transfer will be effective on the 30th November 2009 if this application for provisional order is not heard." The certificate of urgency is equally unhelpful. All that the legal practitioner states is the following:

- “1.1. The applicant is doing studies presently with the University of South Africa an advantage of being at Beitbridge close to the Republic of South Africa.
- 1.2 Murewa is very far from his collection point of study material which definitely prejudice his studies.
- 1.3 There are allegations made against him which are grounds for his transfer which also damage his person but where not put to him for him to give his side of the story. These may even affect his employment.”

There is no allegation of urgency in the founding affidavit and the certificate of urgency. This matter cannot be heard under a certificate of urgency in the circumstances – *Kuvarega v Registrar General* 1998(1) ZLR 188(H). On this ground alone, the application is devoid of merit. Additionally, the applicant became aware of his transfer in early November 2009 and waited until just before the effective date to file the application. He waited for doomsday to arrive.

If I am wrong in the above finding, still the application had to be dismissed for failure to exhaust internal remedies. Even if it is true that the applicant failed to get audience with the 1st and 2nd respondents, applicant as at liberty to approach the Police Service Commission for relief – section 16 of the Police Trials and Boards of Inquiry Regulations, 1965. Thus applicant’s failure without good and sufficient cause to exhaust domestic remedies available to him is fatal to his application – *Tutani v Minister of Labour & Ors* 1987 (2) ZLR 88(H) and *Communications Allied Svc (s) Workers Union of Zimbabwe v Tel-One (Pvt) Ltd* 2005 (2) ZLR 280 (H) at 287.

Whichever way one looks at the application, it has to fail. It is for this reason that I dismissed it with costs.

Samp Mlaudzi & Partners, applicant’s legal practitioners

Civil Division of the Attorney General’s Office, respondents’ legal practitioners