

**JONA NDALAMA**

**Versus**

**CHIEF SUPERINTENDENT – HAPPYMORE SIGAUKE**

**And**

**COMMISSIONER GENERAL – AUGUSTINE CHIHURI**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 28 JANUARY & 13 OCTOBER 2011

Applicant in person  
*J. U. Mumbengegwi* for respondent

Judgment

**NDOU J:** The applicant is a Detective Assistant Inspector in the Zimbabwe Republic Police attached to CID Fraud Section, Bulawayo. He was arraigned before a single officer charged with contravening paragraph 35 of the Schedule to the Police Act [Chapter 11:10] i.e. “acting in an unbecoming manner or disorderly manner or in a manner prejudicial to the good order or discipline likely to bring discredit to the police.” The applicant was represented by a Mr Munjanja of Munjanja and Associates Legal Practitioners during his trial. Notwithstanding his vehement protestations he was convicted and sentenced to pay a fine of \$10,00. The applicant evinced his dissatisfaction with the conviction by appealing to the Commissioner General of Police as provided for in the Police Act. His appeal was unsuccessful. The Commissioner General upheld his conviction and sentence. The applicant was not amused by this turn of events and launched the current application for review. The application was filed on 1 July 2010. The application was filed and served out of time. Before he obtained condonation, the applicant served the application on respondents on 2 July 2010. The applicant’s application for condonation for late noting of review was granted on 30 September 2010. On 11 October 2010 the applicant served on the respondent the notice of set down and notice of amendment of court application.” On 18 October 2010 he served on the respondents “a copy of the amendment of the court application.” The respondents filed their notice of opposition and opposing papers on 20 October 2011. The applicant raised an interlocutory issue that the opposing papers were filed out of time. This point *in limine* should fail simply because the applicant is relying on service that was effected before he obtained condonation for the late filing of application for review. Applicant cannot rely on such defective service. The

relevant service from the papers is one of 11 October 2010 which means that the opposing papers were filed on the seventh day after the service of the application. I now revert to the merits of the application. What can be gleaned from the record of proceedings is that the allegations at the police trial were the following. On 9 October 2009 Police (CID Minerals) Bulawayo arrested one Makadzange Mazarire for illegal dealing in gold. Although the applicant was not stationed at CID Minerals he somehow became aware of the arrest. He is alleged to have approached Lovemore Sibanda, a registered miner. He requested the latter to include Makadzange's name in his mining register so as to facilitate his release from police custody. As alluded to above, the applicant was convicted by a single officer and his appeal to the Commissioner General was unsuccessful. In this application he seeks review of the decision of the Commissioner General of Police. He is challenging the Commissioner General's confirmation of the single officer's judgment. The gravamen of his application is that he was convicted on the testimony of a single witness. Factually, this is incorrect because the state called two witnesses i.e. Lovemore Sibanda and Detective Assistant Inspector Ndabezinhle Mdlongwa of CID Minerals. It is clear that the applicant does not seem to appreciate the legal concept of "single witness". Be that as it may, the single officer made a finding of fact that these two witnesses were credible. It is trite law that assessment of the credibility of a witness is the province of the trial court i.e. the single officer *in casu*. On appeal, the Commissioner General could only have interfered with the findings of the trial officer in this regard if he was satisfied that such a finding of facts defies reason and common sense. There has to be something grossly irregular in the proceedings to warrant such interference. The appellate court must never overlook that the trial officer's living through a drama of a case is in a unique position to evaluate the evidence in its proper perspective. Questions of credibility are par excellence the province of the trial court – *Mbanda v S* SC-184-90 at page 7; *S v Mlambo* 1994 (2) ZLR 410 (S) at 413; *Shoko v S* SC-118-92; *Zulu v S* HB-52-03 and *Marx v S* [2005] 4 ALL SA 267 (SCA). Looking at the papers before me I do not see how the Commissioner General would have interfered with findings of fact by the trial officer. As alluded to above, I am dealing with the review of the appeal tribunal presided over by the Commissioner General. It is trite that this court has wide powers of review in terms of sections 26 and 27 of the High Court Act [Chapter 7:06]. Judicial review is not an appeal from a decision but a review of the manner in which the decision was made – *Chief Constable of the North Wales Police v Evans* [1982] 3 ALL ER 141 (HL) at 155C; *Fikilini v Attorney General* 1990 (1) ZLR 105 (SC) at 109H – 110C. The invitation to this court to upset the determination made by the Commissioner General cannot be accepted if it amounts to requiring the court to sit upon the merits of this determination – *Minister of Labour and Social Welfare & Ors v Pen Transport (Pvt) Ltd* SC-45-89 and *National Foods Ltd v Kare & Ors* 1990 (1) ZLR 223 (HC) at 232-233. *In casu*, the applicant seems to be saying that the single officer's trial determined his guilt on the basis of inadequate evidence (i.e.

evidence of a single witness). This is not a ground for review as envisaged by section 27 of the High Court, *supra*. In section 27, *supra*, the grounds for review are the following –

- “a) Absence of jurisdiction on the part of the court, tribunal or authority concerned;
- b) Interest in the cause, bias, malice, or corruption on the part of the person presiding over the court or tribunal concerned or on the part of the authority concerned, as the case may be;
- c) Gross irregularity in the proceedings or decision.”

The remedy open to the applicant in this case is by way of appeal, if any, and not review. I find nothing in this matter that fits the above requirements or grounds. On review, it is not enough simply to show that the decision was wrong or unreasonable. Special grounds must exist before a court will enquire into the merits – *Ministry of Labour Manpower Planning & Social Welfare & Ors v Pen Transport (Pvt) Ltd, supra*, at page 4 of the cyclostyled judgment, *Makoni v Liquor Licensing Board 1974 (2) RLR 1* and *Quintas v Controller of Customs and Excise 1976 (1) RLR 208*. I find no grounds in terms of which I can review the decision of the Commissioner General.

Accordingly, I dismiss the application with costs.

*Civil Division, Attorney General's Office respondents' legal practitioners*