

REGINALD MAPIKA

APPLICANT

Versus

CHAIRMAN OF POLICE SERVICE COMMISSION

1ST RESPONDENT

And

COMMISSIONER GENERAL OF POLICE

2ND RESPONDENT

And

CHIEF SUPERINTENDENT MASINA

3RD RESPONDENT

And

OFFICER COMMANDING BULAWAYO PROVINCE

4TH RESPONDENT

And

CO-MINISTERS OF HOME AFFAIRS

5TH RESPONDENT

IN THE HIGH COURT OF ZIMBABWE
CHEDA AJ
BULAWAYO 28 JANUARY & 7 MARCH 2013

Applicant in person
T. Dodo for the respondents

Opposed Application

CHEDA AJ: The applicant, an attested member of the Zimbabwe Republic Police, was dismissed from the force on the 4th of June 2012. He has now applied for a review of the decision made by the respondents to dismiss him. The background to this matter is as follows.

On the 9th of February 2009 the applicant was charged before a Regional Magistrate in Harare, for contravening section 93 of the Criminal Law (Codification and Reform) Act Chapter 9:23 (the Code). It was alleged that on 14 July 2009 at house number 1802 Mapereke Road, Marlborough, Harare, he unlawfully by means of threats of force or the use of fraudulent misrepresentation or otherwise deprived Kimberly Tafadzwa Nyamukapa, an adult of her freedom of bodily movement, intending to cause her such deprivation or realizing that there was a real risk or possibility that such deprivation may result.

He was found guilty and sentenced to 8 years imprisonment of which 2 years were suspended for 5 years on conditions of good behaviour.

While he was in Harare Prison waiting for the determination of his bail pending appeal at the High Court the 2nd respondent discharged him from the force as unfit due to misconduct on the 10th of February 2011. He was later released on bail on the 23rd of March 2011. In his founding affidavit he says the 2nd respondent committed both error of law and fact in the manner he handled his case.

When he was shown the police radio message of his discharge on the 5th of April 2011 he immediately lodged an appeal. He says he only got to know then that he had been discharged on the 10th of February 2011. He says his salary was cut off in February unlawfully in violation of section 44 of the Act.

He says it was not correct that he appealed to the 1st, 3rd and 4th respondents out of time. He quoted section 51 of the Police Act Chapter 11:10 which states that:

“A member who is aggrieved by any order made in terms of section 48 or 50 may appeal to the Police Service Commission against the order within the time and in the manner prescribed, and the order shall not be executed until the decision of the Commission has been given.”

He also said the 2nd respondent committed both an error of fact and law by dismissing him without instituting the disciplinary trial and the Board of Inquiry in terms of section 50 of the Police Act. He said the failure by the respondent to carry out a disciplinary trial within a reasonable time was unlawful. He cited a number of cases in which disciplinary trials were held against other police officers in similar cases.

The 1st respondent cited section 48(a) of the Police Act Chapter 11:10 which states that:

“If a member other than an officer, is convicted of any offence and sentenced therefore to imprisonment without the option of a fine, whether or not the execution of such sentence is suspended, the Commissioner General of the Police may (a) discharge the member in which case the discharge may take effect from the date of his conviction.”

There are two sections in the Act which deal with a policeman who is convicted of an offence. Section 48 deals with a “member” while section 49 deals with an “officer”.

“Member” is defined as any person by whatever rank or title designated who has been appointed to and is serving in the Police Force.

“Officer” means a member holding a commissioned rank.

The applicant is a member.

Section 48 says:-

“Procedure on conviction of member for certain offences.

If a member other than an officer, is convicted of any offence and sentenced thereof to imprisonment without the option of a fine, whether or not the execution of such sentence is suspended, the Commissioner may-

- (a) Discharge the member, in which case the discharge may take effect from the date of his conviction; or
- (b) Impose any one or more of the following penalties:-
 - (i) Reduction in rank
 - (ii) Loss of seniority
 - (iii) Withholding of an increment of salary or
- (c) reprimand the member”

It is clear from the above that the suspension of execution of the sentence by an appeal does not save the member from discharge.

I do not understand this section to grant a member the same right as an officer, who, under section 49, is subject to an inquiry in terms of the Commission of Inquiry Act. The Board of Inquiry in section 50 is set up to inquire into the suitability or fitness of a regular force member to remain in the regular force, a different situation from one where there is a conviction for an offence followed by a term of imprisonment.

The applicant in this case is a member, not an officer. He was convicted of a serious crime generally referred to as abduction and sentenced to 8 years imprisonment. The Commissioner was within his right to discharge him from the force.

There is therefore no merit in his complaint and application for review. The application for review is dismissed.

Civil Division of the Attorney General's Office respondents' legal practitioners