

DHERERAI MANYONI
versus
THE COMMISSIONER GENERAL OF POLICE

HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 5 FEBRUARY AND 11 FEBRUARY 2016

Urgent Chamber Application

Applicant in person
Ms D. Ndou for the respondent

MATHONSI J: The applicant, a sergeant in the Zimbabwe Republic Police, based at Stops Camp, is yet another prolific litigator who has emerged from our midst. A sharp shooter who has succeeded in filing several applications in this court while on a solo crusade of fighting police authorities who want to discipline him. The applicant takes over the mantle from legends in the business, stalwarts like Wilbert Munonyora (*Munonyora v CBZ Ltd and others* HH 91/15 and *Munonyora v CBZ and others* HH 50/14); Mrs Towers (*Towers v Chitapa* 1996 (2) ZLR 261 (H) and Claudious Mapedzamombe (*Mhini v Mapedzamombe* 1999 (1) ZLR 561 (H) and *Mapedzamombe v Mhini and others* HH 124/14). Virtually every Judge of this station has dealt with one or other of the applicant's many applications against the police authorities – KAMOCHA J, HB 40/14, MOYO J, HB 28/14; TAKUVA J, HC3018/14 and MAKONESE J, HC 2973/15.

The applicant was discharged from employment on 28 December 2015. On 4 January 2016, he noted an appeal against the discharge to the Police Service Commission in terms of section 51 of the Police Act [Chapter 11:10], the applicant being a “member” of the force as opposed to being “an officer” as defined in section 2 of that Act. The appeal in question is still pending and is yet to be determined.

Notwithstanding the noting of the appeal the applicant bitterly complains that the police authorities have gone ahead to effect the dismissal proceedings. His salary has been terminated,

his rights to liberty and dignity have been violated as the respondent's subordinates have repeatedly harassed him in the presence of his colleagues and members of his family and state property given to him as a police officer has been withdrawn including the government accommodation he has been occupying.

The applicant has therefore approached this court seeking an order interdicting the respondent from such conduct until such time that his pending appeal has been determined by the Police Service Commission. The only thing going in his favour in the present matter is that Ms *Ndou* for the respondent conceded that his termination process was commenced before the authorities received his appeal. Now that he has appealed his salary will be reinstated.

The respondent is empowered by section 48 of the Act to discharge a member convicted of any offence and sentenced to imprisonment without the option of a fine whether or not the execution of such sentence is suspended. That section gives the respondent the discretion to either discharge a member or impose the penalty of a reduction of rank, loss of seniority or withhold a salary increment. He may, in his discretion also reprimand a member.

Appeals against the decision of the commissioner taken in terms of that Part are governed by section 51 of the Act which provides:

“A member who is aggrieved by any order made in terms of section forty-eight or fifty 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.”

As I have said the applicant has appealed the discharge and the Commission is yet to adjudicate on that appeal. It is clear from a reading of section 51 that an appeal to the commission suspends the order appealed against. It is therefore incompetent for the respondent to set in motion the procedure for dismissal when the order has been appealed against. The applicant is entitled to the *status quo ante* which subsisted before the discharge order was issued.

There is a dispute as to what transpired at the time of the applicant's discharge regarding the house he was occupying at Ross Camp. The applicant stated that the officer-in-charge, Chief Inspector Costa Taduwa, instructed him to forthwith vacate the premises as he had been discharged and that he was not going to be given time to relocate. As on a previous occasion the police authorities had humiliated a discharged police constable by throwing his property out in

the street, he feared similar treatment. He therefore quickly looked for alternative accommodation and moved out on his own accord.

According to the affidavit of Taduwa, the applicant vacated the house on his own well before he was discharged. In fact in early December 2015, he had received information that the applicant was carting his property out of the camp but when Taduwa questioned him about it, the applicant denied doing that. He however came to the officer in charge's office on 14 December 2015 to inform him that he had decided to swap houses with one Constable Mleya who also occupied a house in Ross Camp to which the officer in charge did not object. As far as he is concerned the applicant left on his own accord and was not forced out of his accommodation.

In fact, when Taduwa looked for the applicant in order to serve him with his discharge papers he was not at either of the houses as he had vacated. The explanation given by Taduwa was confirmed by Constable Mleya who stated that she is the one who had approached the applicant on 14 December 2014 seeking a swap which was effected on 15 December 2015. She later learnt that the applicant had not taken up the house she had left for him.

I am not persuaded that the applicant was forced out of the house. There would have been no reason to do that on 14 December 2015 days before the discharge radio was received at the station. It is also significant that when he left he was supposed to move into Mleya's house but did not do so, consistent with the explanation given by Taduwa that he was moving his property much earlier in that month.

Where a person voluntarily vacates premises provided for by the employer presumably in preference of better accommodation of his own, the employer cannot be said to be obligated to provide him with accommodation. The obligation terminates at the time he takes the conscious decision to vacate on his own.

Ms Ndou, who appeared for the respondent conceded that when the applicant was discharged his salary was terminated. This they could not do as I have already said, the appeal having suspended the discharge order.

In the result, the provisional order is granted in terms of the draft order as amended.