

DUBE KURAUONE PETER

Versus

ASSISTANT COMMISSIONER MUZEZE N.O.

And

**SUPERINTENDENT MASHAMBA N.O.
CHIEF SUPERINTENDENT MARUTA N.O.**

And

THE COMMISSIONER GENERAL OF POLICE

And

CO-MINISTERS OF HOME AFFAIRS

IN THE HIGH CHOURT OF ZIMBABWE
KAMOCHA J (Retired)
BULAWAYO 14 OCTOBER 2014 & 31 JANUARY 2019

Miss N. Ndlovu for the applicant
Miss C. Saruwaka for the respondents

Court Application for condonation

KAMOCHA J (Retired): When this court application was filed it was erroneously filed as “case number HCA 43/09” meaning that it was an appeal case in the Appellate Division of the High Court. That was an error.

The correct position was that the applicant was seeking condonation for the late filing of his review application.

When the applicant appeared in court with his legal practitioner *Miss N. Ndlovu* on 14 October 2014 he withdrew the matter and tendered wasted costs. He was however ordered to pay costs on an attorney and client scale due to the manner he handled his case.

HB 10/19
HC 1362/13

After a period of 3 years 6 months on 21 March, 2018 he addressed a letter to the High Court. The letter was re-sent to the acting Registrar on 22 June 2018 who forwarded it to me. The letter is quoted *in extenso infra*,

“22 June 2018

The Acting Registrar
High Court of Zimbabwe
Bulawayo

Re: Peter Kurauone Dube versus President of the Republic of Zimbabwe c/o Attorney General Civil Division & 3 Others: HC 1362/13; X Ref HC 43/09

Peter Kurauone Dube addressed a letter to the Registrar of the High Court, Bulawayo seeking clarification of order HCA 43/09, X Ref 1362/13. The request which was in the following terms was received in the High Court registry on 21 March, 2018.

- “(1) I am the applicant in matter HCA 43/09 which is an appeal which was filed in 2009.
- (2) This matter was never placed before a judge for deliberation as claimed in the order attached.
- (3) My query is how this said order can be issued to a record which is still not yet finalised.
- (4) May this issue be clarified so that I can enforce my order which is in HC 1673/09 as this is hindering its enforcement.

I hope this will reach your favourable considerations and I am expecting a reply.

DUBE KURAUONE PETER
APPLICANT

CELL: 0785 961 255”

What follows is my response to it.

Mr Peter Kurauone Dube herein referred to as “Dube” was an Inspector in the Zimbabwe Republic Police. Due to a number of offences he had been convicted of under the Police Act the organisation decided to convene a Board of Inquiry to determine whether or not he was still a fit and proper person to remain a member of the police force.

The Board of Inquiry was convened on 10 July 2008. Its conclusion was that he was unsuitable to remain a member of the Zimbabwe Republic Police and recommended to the Commissioner General accordingly.

When he was informed about the outcome he erroneously filed an appeal against the State President. It was entirely his fault that he made that error. He should have consulted a legal practitioner for advice. Instead, he appealed to the Appellate Division of the High Court in case number HCA 43/09. That was not proper. He was discharged from the police force by the State President in terms of section 49 (b) of the Police Act [Chapter 10:11] “the Act” following the recommendations made by the Board of Inquiry.

He noted an appeal in case number HCA 43/09. The matter was removed from the High Court appeal roll on 4 March 2013. It was never on the appeal court roll again.

Dube seems to have realised his error and decided to file an application for review but due to a grossly inordinate delay he needed to apply for condonation for the late filing of the application for review. Before the application for review he filed an application at the High Court under HC 1673/09 seeking for an order in these terms which was granted on 25 March 2010:

“It is ordered that:-

- (1) the 1st, 2nd and 3rd respondents be and are hereby ordered to re-instate applicant to former position pending finalisation of matter under case number HCA 43/09.
- (2) respondents to pay costs of suit only if they oppose the application.”

Nearly a year later on 16 February 2011 the above order was rescinded with no order as to costs in case number HC 78/11 with references X Ref HC 1673/09 and HCA 43/09.

What Dube needs to understand about cases number HCA 43/09 and number HC 1673/09 is as follows:

(a) Case number HCA 43/09

This was an appeal to the High Court sitting as a court of appeal presided over by two judges as happened on 4 March 2013 and the matter was removed from the roll. The matter has not been reinstated on the roll. If Dube had wished to still prosecute his appeal he would have to re-instate it on the appeal court roll. He did not do so.

So case number HCA 43/09 remains a High Court appeal matter which remains removed from the High Court appeal roll. It is not on the roll.

In the meantime, Dube has done the following: On 25 March 2010 he applied for and was granted an order against the 1st, 2nd and 3rd respondents ordering them to re-instate him to his former position pending finalisation of matter under case number HCA 43/09.

Needless to say that Dube made no attempt to prosecute the appeal until the respondents obtained an order for the rescission of the order that had been granted to him.

(b) Case number HC 1673/09

Apart from the fact that the order in case number HC 1673/09 was rescinded and the rescission was not appealed against and is still extant, Dube no longer wished to prosecute the appeal in case number HCA 43/09 and had in fact abandoned it. That is clear from the way he conducted himself.

He proceeded to file an application for review. Because the application was done out of time, he filed an application in case number HC 1362/13 for condonation of the delay to file his application for review. According to his draft order his application for review was in case number HC 1673/09.

It must be reiterated that the order in HC 1673/09 was rescinded in case number HC 78/11 and the rescission order is extant since it has not been set aside by any competent court. It, therefore is incapable of enforcement.

As regards to the order granted by the court on 14 October, 2014 the Registrar's observations were entirely correct. The matter related to the review application in case number HC 1362/13 filed out of time for which Dube sought condonation to file it out of time. The order had nothing to do with High Court appeal case number HCA 43/09. Neither did it have anything to do with the set aside order which was in case number HC 1673/09.

On 14 October, 2014, Dube, through his legal representative Ms N. Ndlovu, withdrew the review application and tendered costs. That is where the order which Dube wants clarified emanated from.

The correct citation of the cases is as follows:

- Case No. HCA 43/09 - High Court Appeal – removed from roll
- Case No. HC 1673/09 - Rescinded High Court order
- Case No. HC 1362/13 - Application for review – withdrawn with tender for costs”.

After receipt of the above response he addressed the following to the Registrar on 12 October, 2018.

The Registrar
Bulawayo High Court
Bulawayo

Dear Sir/Madam

RE: REQUEST FOR A HIGH COURT ORDER IRS LETTER OF CLARIFICATION FROM RTD JUSTICE KAMOCHA REF ORDER ON HCA 43/09 X-REF 1362/13 BY DUBE KURAUONE PETER

1. I am the applicant in Case HCA 43/09. The appeal case was not finalised.
2. On 14 October 2014 Retired Judge Justice Kamocha by error issued an Order to Application HCA 43/09 which was an X-REF to Application 1362/13.
3. On 21st March 2018 I wrote a letter to the Registrar seeking clarification on the matter.
4. On 28th June 2018 I got a response from Retired Judge Justice Kamocha stating that the said High Court Order does not have anything to do with High Court Application HCA 43/09 and also does not have anything to do with High Court Application HC 1673/09.
5. I am requesting to have this letter from Retired Judge Justice Kamocha (Response) to be a High Court Order as requested by my former employer ZRP so that it can nullify the High Court Order they are having.
6. I wish the order to read in the High Court of Zimbabwe Bulawayo this day of ,..... 2018.

Before Justice

Whereupon after reading documents filed of record

IT IS ORDERED THAT

HB 10/19
HC 1362/13

The High Court Order on Application HCA 43/09 does not have anything to do with Application HC 43/09 and does not have anything to do with Application 1673/09

By the Judge

Deputy Registrar

7. Parties are on Application HCA 43/09 and I am hoping that my letter will reach your favourable considerations

Attached is letter and order.

8. I will be waiting for your response.

Yours faithfully

Dube Kurauone Peter Applicant”

What Dube is seeking is difficult to follow in light of the following.

Matter number HCA 43/09 was an appeal case. On 25 March 2010 Dube approached the High Court seeking for an order which he was granted in the following terms:

“It is ordered that:

- (1) The 1st, 2nd and 3rd respondents be and are hereby ordered to re-instate applicant to former position pending finalisation of matter under case number HCA 43/09.
- (2) Respondents to pay costs of suit only if they oppose the application.”

Three years later on 4 March 2013 the said appeal case was on the roll but was removed therefrom. Thereafter Dube made no effort to re-instate it on the High Court appeals roll. He in fact abandoned the appeal case in its entirety and had no wish to re-instate it. Instead, he had decided to file an application at the High Court for review which I shall revert to in due course.

The above order granted to him on 25 March 2010 as can be seen is dependent on the finalisation of the appeal matter HCA 43/09. The order can only exist when the appeal is in existence not when it is abandoned as *in casu*. The order is incapable of enforcement for that reason.

To make matters worse the respondents in the matter applied for and were granted an order in these terms:-

“It is ordered that:-

- (1) The court order granted in favour of the respondent on 25 March 2010 in the main matter HC 1673/09 be and is hereby rescinded.
- (2) There be no order as to costs”.

This order has not been set aside by any competent court and is still extant. This is the other reason why the order in case number HC 1673/09 is incapable of enforcement. In the light of the above two reasons the following assertions by Dube in his letter of 22 June, 2018 do not need any serious considerations and these are:-

- “(2) This matter was never placed before a judge for deliberation as claimed in the order awarded.
- (3) My query is how this said order can be issued to a record which is still not yet finalised.
- (4) May this issue be clarified s that I can enforce my order which is in HC 1673/09 as this is hindering its enforcement.”

Application for review

After the appeal case in HCA 43/09 was removed from the roll on 4 March 2013 Dube abandoned it in its entirety. The result was that the rescinded order would have *ipso facto* come to an end even if the respondents would not have sought for its rescission.

Dube seems to have realised that because his next course of action was to approach the High Court and file an application for rescission in case number HC 1362/13 which also had its own problems. The application was made after a period of five years with no application for condonation.

On realising his error he filed an application for condonation to file it out of time in case number HC 1362/13. After some postponements he, through his legal representative *Ms N. Ndlovu*, withdrew the matter and tendered costs. That is the end of the matter.

Dube is just being frivolous and vexatious when he alleges that the appeal was not finalised when he in fact abandoned it. He further seeks to nullify a court order whose appeal he had abandoned. His assertions do not need any serious consideration and ought to be rejected.

Civil Division of the Attorney General's Office, respondent's legal practitioners