

THE ZIMBABWE NATIONAL LIBERATION WAR VETERANS ASSOCIATION
versus
SUPERINTENDENT MAKUNIKE T. N.O
and
THE COMMISSIONER GENERAL OF POLICE
and
THE MINISTER OF HOME AFFAIRS
and
THE ATTORNEY GENERAL OF ZIMBABWE

HIGH COURT OF ZIMBABWE
CHITAKUNYE J
HARARE, March 17, and 19 May, 2017

Urgent application

T. Zhuwarara for applicant
J. Mumbengegwi for 1st, 2nd and 3rd respondents

CHITAKUNYE J. On the 17th March 2017 after hearing submissions from the parties I granted the following order:

1. That the meeting that the Applicant intends to hold on the 23rd of March 2017 from 10am to 3pm at the City Sports Centre, shall proceed as notified.
2. That the Applicant ensures that at the meeting there shall be no procession, marching or toy-toying.
3. The 1st respondent and the police force be and are hereby ordered to refrain from disrupting the meeting referred to in paragraph (1) above.
4. The respondents shall pay the Applicant's costs.

The background

The applicant is an association of national liberation war veterans. That association is duly recognised with capacity to sue and be sued.

On the 10th February 2017 the Applicant wrote a letter to the Officer Commanding Police, Harare Central District as the regulating authority for Harare Central District, as defined in terms of section 4 of the Public Order and Security Act, [*Chapter 11:07*] (hereinafter referred to as POSA). The purpose of the letter, purportedly in terms of section 25 of POSA, was to notify the regulating authority of the applicant's intention to hold its National General Meeting. That meeting was scheduled for the 10th March 2017.

On the 4th March 2017 the regulating authority through Chief Superintendent Chizemo, responded to the applicant's letter stating that the applicant did not comply with s 23(1) (a) and (b), 23(2) and 25(2) of POSA.

On the 5th March 2017 the applicant responded to the regulating authority's letter by indicating that it had corrected the deficiencies alluded to in the letter of 4 March.

In response to a subsequent letter that was written by the applicant's legal practitioners, the regulating authority invited the applicant's legal representative to a meeting in terms of s 26(3) of the Act. The meeting was held on the 9th March 2017. During that meeting the regulating authority still expressed that the notice did not comply with section 25(2) of the Act.

As time was running out the applicant subsequently rescheduled its meeting to the 17th March 2017 in order to ensure it complied with what the first respondent was demanding. A fresh notice of the meeting was served on the regulating authority on the 9th March 2017.

On the 13th March the regulating authority invited the applicant to a consultative meeting in terms of s 26(3) of the Act. During that meeting it was pointed out to the applicant that its notice did not comply with all the requirements in terms of s 25.

Despite the consultative meeting of 14 March, on the 15th March the authority wrote to the applicant stating that the Notice was not in compliance with s 25(c) and 26(3) of the Act.

The culmination of all this was that the applicant felt frustrated by the regulating authority's antics in stating that the notice was not compliant with the Act in spite of the consultative meetings held to iron out what ever may not have been clear on the notice .

The applicant thus approached this court on an urgent basis as the date for the meeting was fast approaching with no indication that the regulating authority will give a green light to the meeting.

The applicant alleged that the regulating authority was not being *bona fide* in its exercise of its duties in terms of the Act in contravention of s 26(4) of the Act

The applicant also alleged that the regulating authority was also infringing on the applicant's constitutional right of freedom of assembly and association, freedom of expression as well as the right to make political choices freely as is provided for in sections 58, 61 and 67 of the Constitution of Zimbabwe.

The respondents opposed the application. However, only the first respondent deposed to an opposing affidavit. The tone of his affidavit was, as stated by the applicant, that the

applicant had not complied with the relevant subsections for it to be given authority to hold its meeting. According to the first respondent, the applicant was still to comply with what the parties had discussed in the consultative meeting.

The applicant's counsel submitted that the first respondent was wrong in terming the applicant's meeting illegal and in giving the impression that the applicant needed the respondents' authority to hold their meeting. In that regard counsel alluded to the fact that the applicant's meeting was not a public meeting but a meeting involving applicant's members only. Such a meeting was not open to members of the public. The purpose of the meeting had been explained to the respondents and it was made clear who were to attend the meeting and the measures applicant had put in place to ensure that only its members, and not members of the public attended.

In *Z C T U v Officer Commanding, ZRP, Harare District & Another* 2002(1) ZLR 323(H) CHINHENGO J had occasion to examine the meetings deemed to be public meetings for the purposes of s 25. At 331B-F the learned Judge opined that:

“Another basis on which this matter may be examined are the definitions of ‘public gathering’, ‘public meeting’ and ‘meeting’ in s 2 of POSA. POSA does not require that persons who intend to hold meetings which are not meetings as defined in that Act, or which are not public in nature, should give notice to the regulating authority in terms of s 24. In so providing Parliament appreciated that the law would be so draconian as to be a blatant contravention of the rights and freedoms enshrined in the Constitution, hence, it did not require any notice to be given in respect of such meetings. The three definitions in s 2 of POSA which are relevant in this regard are formulated thus:

‘public gathering’ means a public meeting or a public demonstration;

‘public meeting’ means any meeting in a public place or meeting which the public or any section of the public is permitted to attend whether on payment or otherwise;

‘meeting’ means a meeting held for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters.

These definitions put it beyond any doubt that the public gathering referred to in s 24 of POSA is a meeting held in a public place or one to which the public is permitted to attend and which is held to discuss matters of public interest.”

Section 2 of Act 8 of 2007 (amendment to POSA), redefined Public meeting to mean:

“any meeting of more than fifteen persons in a public place or meeting which the public or any section of the public is permitted to attend, whether on payment or otherwise, but does not include a meeting of any organ or structure of a political party or other association held in—

(a) any private place, whether or not it is wholly or partly in the open; or

(b) any public place that is not wholly open;”

By virtue of the above definitions it is clear that the provision in s 25(1) (b) of POSA that the convener of a public meeting 'shall not later than five days before the date on which a public meeting is to be held, give notice of the public meeting in writing signed by him or her to the regulating authority for the district in which the public meeting is to be held, would not apply to a meeting which is not a public meeting or gathering or meetings to discuss matters of public interest.

In casu, the meeting that the applicant had notified the respondents about was not a public meeting and neither was it to discuss matters of public interest. It was a meeting of the applicant's members to discuss issues affecting its members. The meeting was not open to the public. In the circumstances notice to the regulating authority was not necessary.

It may also be noted that s 26A of POSA provides that sections 23, 24 25 and 26 shall not apply to gatherings of a class described in the schedule.

The gatherings in the schedule include gatherings held by any club, association or organisation which is not of a political nature and at which the discussions and matters dealt with are not of a political nature.

In this case, I did not hear the respondents to allege that the meeting that the applicant intended to hold was of a political nature or that matters to be discussed were of a political nature. The notice given to the respondents and subsequent discussions and correspondence between the parties show clearly that the matters for discussion pertained to the welfare of war veterans.

The applicant out of abundance of caution, and conscious of the sometimes overzealous reaction of the police, notified the regulating authority. Unfortunately the regulating authority viewed such notification as giving it power in terms of POSA to impede the holding of a meeting not covered under POSA. That was clearly wrong.

In any case it is pertinent to note that the sections of POSA invoked by the respondent merely require a convenor to notify the regulating authority. The section does not give the regulating authority the power to be the GRANTOR of Authority to hold such meetings or not. The regulating authority is notified so that they are aware of the meeting or gathering taking place in the area of their jurisdiction and, where necessary, put security measures in place. Such measures must not be to prevent the holding of the meetings but to ensure that the meetings are held in tranquillity and in accordance with the notice given. The power to sanction meetings that the police may have had in the past is no longer there. Clearly the regulating authority overstepped its mandate in this case. See *Lynette Karenyi v The State* HH

281/14; *ZCTU v O C Police, Kwekwe & Others* 2010(2) ZLR 277(H) and *ZCTU v OC Police, Harare Central District & Others* HH297/13

In the circumstances I granted the application with costs in the following terms:

It is ordered that:

1. The meeting that the applicant intends to hold on the 23rd of March 2017 from 10 am to 3 pm at City Sports Centre, shall proceed as notified.
2. The applicant ensures that at the meeting there will be no procession, marching or toy-toying.
3. The 1st respondent and the police force be and are hereby ordered to refrain from disrupting the meeting referred to in paragraph (1) above.
4. The respondents shall pay the applicant's costs.

Mhishi Nkomo Legal Practice, applicant's legal practitioners.
Attorney –General's Office, Civil Division, respondents' legal practitioners