WAR VETERANS PRESSURE GROUP
and
SHOORAI NYAMANGODO
and
DIGMORE NDIYA
and
DAPHINE KANOTI
and
FREDRICK NGOMBE
and
REUBEN ZULU
and
JOSEPH CHINGUWA
and
HAZVINEI MACHINGURA
versus
MINISTER FOR DEFENCE AND WAR VETERANS AFFAIRS N.O
and
MINISTER FOR FINANCE N.O.
and
PENSION MASTER-CIVIL SERVICE COMMISSION N.O

HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 28 November 2020 and 13 March, 2020

Opposed application

C.W. Kanoti, for the applicants
C. Siqoza, for the respondents

MANGOTA J: The applicants are a pressure group. They represent, speak for, and on behalf of, all men and women who fought for the liberation of this country from colonial rule. They, in essence, brought about the birth of independent Zimbabwe.

The effort of the applicants and all those who fall into their category can hardly be over-emphasized. It was for the mentioned reason that the legislature remained alive to the positive

contribution which they made towards the birth of Zimbabwe. It recognized their effort by enacting in the Constitution of Zimbabwe clauses which speak eloquently about their work and the need on the part of the people of this country to always remember their sacrifice and to look after their welfare without fail.

The legislature's recognition of the immense work of these men and women who are the subject of this application is evident from a reading of the following provisions of the Constitution of Zimbabwe: The first lines of the preamble to the constitution begins with the exaltation of the applicants. It reads:

> "We the people of Zimbabwe…..exalting and extolling the brave men and women who sacrificed their lives during the Chimurenga /Umvukela and national liberation struggle…"

The above exaltation is carried out in s 23 of the Constitution which reads:

> "(1) The State and all institutions and agencies of government at every level must accord due respect honour and recognition to veterans of the liberation struggle…..
> (2) The State must take reasonable measures including legislative measures, for the welfare and economic empowerment of veterans of the liberation struggle."

Section 84 of the Constitution makes provision for the rights of veterans of the liberation struggle. It reads:

> "(1) veterans of the liberation struggle….are entitled to due recognition for their contribution to the liberation of Zimbabwe and to suitable welfare such as pensions and access to basic health care."

In enacting s 84 (1) of the Constitution, the legislature was only acknowledging what Government had accorded to the applicants in 1997 when it enacted Statutory Instrument 280 of 1997 ("the Instrument"). The instrument conferred rights to veterans of the liberation struggle. It reads, in the relevant part, as follows:

> "A war veteran shall, with effect from 1 January 1998, be entitled to a monthly pension at the rate of two thousand dollars which shall, subject to these regulations, be payable until the death of the war veteran."

In enacting as it did, Government must have realized that a good number of veterans of the liberation struggle were not gainfully employed or that, if they were so employed, whatever they got from their employer would not adequately compensate them for their past sacrifices to the country. It was for the mentioned reason, in my view, that Government placed upon itself the obligation to pay to each living veteran of the liberation struggle the sum of $2000 which he/she must receive for the remaining part of his/her life.

The applicants' entitlement as stated in s 4 (1) (a) of the instrument constitutes their cause or action. They apply for declaratur as well as two compelling orders. They move me to declare that they are entitled to the monthly pension of $2000 and that the same remains payable until the death of each such payee. They also move that, where the court finds favour with their application, it should compel the respondents to comply with the declaration

They allege that the respondents, without consulting them, went on to pay them any amount which they desired. They state that currently the respondents are paying to each one of them $246,60 and not the statutorily provided $2000 per month.

The respondents oppose the application. Of note in this regard is the notice of opposition of the second respondent. Apart from the *in limine* matter which he raised, the second respondent asserts nothing of a material nature for or against the application. He defers all the allegations of the applicants to the third respondent.

The first and the third respondents sing from the same hymn book in so far as their respective notices of opposition are concerned. They are *ad idem* on the point that the applicants and their companions receive a monthly pension of $246.60.They state that the figure was/is equated to the rank of warrant officer class one in the Zimbabwe National Army. They allege that the same was arrived at after they had consulted the authorities. They move me to dismiss the application with no order as to costs.

The *in limine* matter which the second respondent raised relates to the applicants' *locus standi*. He states that they do not have such. He, in effect, challenges them to prove that they can sue for, and on behalf of, those who fall into their category as well as themselves.

The applicants state to the contrary. They insist that they have the requisite *locus*. They assert that they, in the past, engaged all the respondents with a view to reaching an amicable settlement of the matter. They assert that, when they engaged the respondents, the latter were aware that they were speaking not only for themselves but also for all veterans of the liberation struggle. They aver that they appeared in the print and electronic media in pursuance of the same mentioned cause.

Given that the respondents, or some of them, gave audience to the applicants in the past on the subject – matter of this application, the second respondent's *in limine* matter remains misplaced. He cannot, as it were, be allowed to approbate and reprobate as he seems to want to

do *in casu*. He, or all the respondents, should have denied audience to the applicants if he was, or they were, of the view that the applicants did not have any *locus* to discuss with him/ them the subject which relates to their pension. The fact that he or his predecessor(s) and/or the respondents as a whole gave an ear to the applicants on previous occasions works to the advantage of the latter.

In response to the challenge which the second respondent mounted on the issue of the applicants' *locus*, the applicants filed documentary evidence which shows their war veteran status. They filed the same as part of their answering affidavit. That, therefore, puts to rest the second respondents preliminary matter.

The respondents' submission which is to the effect that the application insinuates that it is one for a class action may be likened to the conduct of a person who shoots his gun in the dark. He does not aim at any particular object. He remains content to shoot at anything which may be in his line of fire. He may also waste his bullets when he shoots at nothing.

The use of the word "insinuate" which appears in the respondents' Heads is instructive. Various definitions are ascribed to the word. *Thesaurus Learners Dictionary*, for instance, defines *insinuate* to mean:

1. to suggest or hint slyly; or
2. to infuse or instil subtly; or
3. to introduce or bring into a position or relation by indirect or artful methods.

The long and short of the respondents' assertion is that they suggest or hint slyly that the application resembles that of a class action. They are not coming out clearly and categorically that it is such.

Resemblance and the fact of being something are two different concepts. The two do not share the same genus. They are miles away from each other.

The applicants did not ever state that the application is one for a class action. They aver that it is an application for a declaratur which is combined with that of compelling orders. Their uncontroverted statement is that they are a pressure group which represents veterans of the liberation struggle. They assert that their companions and them should benefit from the Instrument which Government, through the legislature, issued in their favour in 1997.

A reading of the application shows that the same is far removed from the provisions of the Class Action Act. It shows that the same is a stand-alone case which has nothing to do with the suggested Act. It is a simple, ordinary application which the applicants brought before the court after they complied with the provisions of the State Liabilities Act.

The respondents' *in limine* matter lacks substance. They raised it as a way of distracting the court from the real issue which it should determine *in casu*. The preliminary matter is, therefore, devoid of merit.

This application, it is needless to mention, is anchored on s 14 of the High Court Act, in the main, as well in the area which relates to compelling orders. The applicants move me to declare that they are each entitled to their pension and, if the declaration is made, to compel those who are responsible for payment of their monthly pension to pay to each one of them what is due to him or her at the end of each month which succeeds the date of the order.

Section 14 of the High Court Act confers a discretion on the court to make a declaration on a person's existing, future or contingent right or obligation. For the court to make the declaration, however, the applicant must satisfy it that:

(a) he has a direct and substantial interest in the subject - matter of the inquiry;- and

(b) lack of the inquiry will remain prejudicial to his right.

It is pertinent for me to cite the section so that the application is placed into context. It reads:

> "High court may determine future or contingent rights.
> The high court may, in its discretion, at the instance of any interested person inquire into and
>
> determine any existing, future or contingent right or obligations notwithstanding that such person
> cannot claim any relief consequential upon such determination" (emphasis added)

That the applicants have a direct and substantial interest in the subject-matter of this application requires little, if any, debate. A favourable outcome of the application will be of immense benefit to them. The effort which they made to engage the respondents speaks volumes of their interest in the matter. The current suit is but one such piece of evidence which evinces their interest.

The fact that they engaged counsel to prosecute their case shows the determination on their part to have the dispute which exists between the respondents and them resolved. They took a cautious approach to their cause. They remained alive to the fact that, if they prepared and filed the application as self-actors which was within their power to do, their application might not have measured up to the required standard.

The respondents, on their part, do not dispute the applicants' interest in the application. All they assert is that the applicants cannot state what exactly is due to them on the ground that there have been various changes which treasury introduced through the various monetary policy statements over the period.

The issue of the applicants' interest in the application is, therefore, taken as given. It is not debatable at all. It is as clear as night follows day.

The applicants anchor their claim to pension on the instrument. The same accords to each one of them the right to receive pension of a certain sum on a month-by-month basis. Each one of them is, in terms of the instrument, entitled to that sum for the remaining part of his or her life. The pension only terminates at his or her death.

The respondents, once again, do not dispute that the applicants and their companions are each entitled to a monthly pension of a certain sum of money. What they dispute is the *quantum* which they should pay each member of veterans of the liberation struggle. They pay to each of them $246.60. This, they submit, was computed by them when they equated the figure to that of a soldier who holds the rank of warrant officer class one in the Zimbabwe National Army.

The instrument which forms the foundation of this application is law. The legislature enacted it at the instance of the executive arm of the state. The same remains on the statute books of the country. It has neither been amended nor repealed. It is extant.

It cannot, therefore, be denied that the applicants and their counterparts have a clear right to their monthly pension. That right exists in the instrument as well as in the Constitution of Zimbabwe. Any denial of that right to them by the respondents, or by anyone else for that matter, constitutes a violation of the instrument and the constitution which, as is known, is the supreme law of the land.

Subsection (1) of section (2) of the Constitution of Zimbabwe is instructive. It speaks to the supremacy of the constitution over all other laws which the legislature has enacted and will enact in future. It reads:

> "This constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency." (emphasis added)

The constitution, it has already been observed, makes provision for the welfare of the applicants and those who fall into their category. It states that they must receive their pension and other benefits which are stipulated in the same.

The respondents do not refer to any law which supports the position which they have taken and continue to take on the subject -matter of this application. All they have referred, and continue to refer, to are monetary policies which Government has taken and continues to take in its endeavor to address the fundamentals of the country's economy over the period which extends from 1997 todate.

Conduct which begets these policies of Government is, no doubt, inconsistent with the Constitution of Zimbabwe. A *fortiori* in the area where the constitution stipulates the entitlements of veterans of the liberation struggle. It goes without saying that the conduct which is inconsistent with the country's constitution is invalid to the extent of its inconsistency with the same.

The respondents' assertion which is to the effect that the Pension Review Tribunal consulted with relevant authorities and agreed on a policy of indexing was veterans' pension to the rank of warrant officer class one in the Zimbabwe National Army cannot hold. It cannot hold for the simple reason that:

a) policy cannot over-ride the law;
b) the applicants who were/are adversely affected by the policy which the Pension Review Tribunal made were not consulted when the decision to equate their entitlements which are stipulated in the instrument to the rank of warrant officer class one was taken-and
c) the instrument which is the law on the subject-matter of this application was not amended nor repealed.

The issue of hearing a person who is, or may be, adversely affected by a decision of an administrative authority is of paramount importance. The *audi alteram partem* principle, as it is often called, has remained in the realms of a country's system of justice delivery for as long as man started to inhabit the face of the planet earth. It is one of the principles of natural justice which the court spoke eloquently about when it stated in *Taylor* v *Minister of Education & Anor*, 1996 (2) ZLR 772 (S) at 780 A-E, that:

> "The maxim *audi alteram partem* represents a flexible tenet of natural justice that has resounded through the ages. One is reminded that event God sought and heard Adam's defence before banishing him from the Garden of Eden."

This court re-stated the same principle in *Hutchings* v *St Johns College*, HH 9494/13 when it remarked that:

> "The *partem* rule holds that a man shall not be condemned without being given a chance to be heard in his own defence."

I lay emphasis to the above-mentioned principle for obvious reasons. The reasons are that if the respondents who hatched the instrument remained alive to its existence and that its aim and object were/are to cater for the welfare of the applicants and those whom they represent, they would have realised the need on their part to consult the applicants and their counterparts in their effort to manage the country's turbulent economy. If they consulted and agreed with them to amend the instrument to be in *sync* with what was obtaining at each phase of the economy's challenges as they say they did with the authorities, this application would not have been necessary. Lack of consultation with the affected parties on the part of the respondents and their refusal to heed what the law beckoned them to observe necessitated the application.

The applicants, it has been observed, did not hatch the idea which brought about the instrument from which they should benefit. The respondents hatched the idea which, through the legislature, they translated into law. They should, therefore, have realised that they had to examine that law at each stage that they hatched policies which aimed at addressing the challenges which the economy faced at all stages of its transition from the Zimbabwe dollar of 1997 right through to the bearer cheque, the multiple currency, the Real Time Gross Settlement commonly referred to as the RTGS, the bond note and/or the Zimbabwe dollar of 2019.

The respondents cannot blame their failure to examine the implications of the instrument at each stage of the economy's transition on the applicants and those whom they represent. The

unfortunate blame remains wholly and squarely in their court. They, therefore, have no option but to address their failure to act on this aspect of the case as it confronts them currently.

The submissions of the respondents are very revealing. They filed the same on 18 November 2019 at my invitation to clarify the contents of their notices of opposition. Their argument runs in the following order:

> "14 … it is respectfully submitted that the old Zimbabwe dollar was made up of notes and coins which had not been demonetized.
> 15 This Zimbabwe dollar continued to be the legal tender in Zimbabwe until it was demonetized through Statutory Instrument 70 of 2015.
> 16 Demonetization is defined as 'the act of stripping a currency unit of its status as a legal tender. It occurs whenever there is a change of ……currency: The current form or forms of money is pulled from circulation and retired, often to be replaced with new notes or coins. Sometimes a currency completely replaces the old currency with the new currency'.
> 17 The Cambridge dictionary defines demonetization as 'to officially stop using particular notes or coins, or a particular currency.
> 18 In *casu*, it is respectfully submitted that the act of demonetisation through SI 70 of 2015 put a stop to this Zimbabwe dollar as legal tender, in other words it ceased to exist. After 30 September 2015 nothing remained that was called the Zimbabwe dollar.
>
> THE NEW ZIMBABWE DOLLAR
> 19 Statutory Instrument 142 of 2019 introduced a new Zimbabwe dollar which Zimbabwe dollar has no relationship with the Zimbabwe dollar that existed prior to the demonetisation in 2015.
> 20 …..
> 21 ……. this new Zimbabwe dollar is made up of the RTGS, Bond notes and coins and no other currency.
> 22 This marks a clear distinction between the old Zimbabwe dollar and the new Zimbabwe dollar." [emphasis added]

The submissions of the respondents are specious. They are not suggesting that the demonetization process repealed the instrument. The same is extant as well as effective.

The respondents continue to state that the old Zimbabwe dollar is different from the new Zimbabwe dollar which is made up of RTGS and bond notes. They, however, do not state the difference between the two sets of currencies. The difference which is evident is that the old Zimbabwe dollar which was dead and buried was replaced by the new Zimbabwe dollar.

The argument of the respondents would have held if they based the difference between the two sets of dollars on the value of each dollar. The old Zimbabwe dollar had value as measured against the major currencies of the world. Equally, the new Zimbabwe dollar has its own value as measured against the same.

A comparison of the two values would have shown the difference between the two sets of dollars. The statement of the respondents should have shown the difference in value between the two sets of dollars for them to assert, as they are doing, that the old Zimbabwe dollar is different from the new Zimbabwe dollar. Anything short of the stated matter renders their statement meaningless.

Because the respondents cannot show the alleged difference in value between the two sets of dollars and given that the country's legal tender is in dollars, the instrument which Government hatched and, through the legislature, crafted into law remains applicable to the war veterans' circumstances. They should, therefore, be accorded what the law confers upon them.

The applicants proved their case on a balance of probabilities. The application is, accordingly, granted as prayed in paragraphs 1 and 2 of the draft order.

Kanoti & partners, applicant's legal practitioners
Civil Division of the Attorney General's Office, respondents' legal practitioners