

CONSTABLE GWINJI TAURAYI 059884Q  
versus  
THE TRIAL OFFICER SUPERINTENDENT MPALA  
and  
THE COMMISSIONER GENERAL OF POLICE

HIGH COURT OF ZIMBABWE  
TAGU J  
HARARE 3 February and 29 March 2017

### **OPPOSED MATTER**

*A Mugiya*, for the applicant  
*L T Muradzikwa*, for the respondents

TAGU J: The applicant who is a member of the Zimbabwe Republic Police holding the rank of constable is seeking an order to the effect that:

- a. Application for condonation for late filing of Application for Review be and is hereby granted.
- b. The Applicant be and is hereby ordered to file his application for review within 10 days from the date of this order.
- c. Costs shall be in the cause.”

In his founding affidavit the applicant stated on 25 May 2014 he appeared before the first respondent wherein he was charged for contravening paragraph 40 of the Schedule to the Police Act [*Chapter 11:10*] as read with s 29 (iii) of the said Act. He was convicted by the first respondent who subsequently sentenced him to 12 days imprisonment. He said he was not legally represented during the proceedings. He later consulted his current legal practitioners of record for advice on his next cause of action and his legal practitioner went on to peruse the record and discovered that the trial was not conducted in terms of the dictates of our due process of law and thus he was not afforded a fair hearing and that the proceedings by the first respondent warrant the intervention of this Honourable Court by way of a review.

He submitted further that he was advised that the application for review should have been filed before this Honourable Court within eight weeks from the date of finalisation of the decision to be reviewed. Hence he approached this Honourable court with this present application seeking an order for condonation for late filing for review as his failure to file

same was not wilful for a number of reasons. The first reason being that he was not legally represented at the trial and as a lay person he was not aware of the limited time as required by this Honourable Court. Secondly he thought of appealing but was afraid that he would lose his employment within the force. After approaching the current legal practitioners the first respondent refused to furnish him with the record of proceedings hence his legal practitioners could not proceed to file the application for review without having sight of the record of proceedings which formed the basis of the allegations in question.

He submitted that he has prospects of success on review because the first respondent did not advise him of the charge he was pleading to and or the offence he was charged with since there was the main charge and an alternative charge. Secondly, the first respondent's record of proceedings is in shambles as he did not write down all what was said in court during the proceedings and he only wrote down what was only necessary to convict him. He therefore reserved the right to file supplementary grounds once he had sight of the record of proceedings.

The application is opposed by the respondents on the basis that firstly, the application was not served on the first respondent but was only served on the second respondent at Police General Headquarters in violation of r 231 (1) of the High Court Rules 1971, secondly, the application was hopelessly made out of time in that the applicant was convicted on 5 June 2014, but instituted this application on 6 November 2014 when he should have instituted it by 17 July 2014 which is within 8 weeks of his sentence. They said the applicant opted to file an appeal on 11 June instead. Thirdly, on the merits the respondents submitted that the applicant is not candid with the court because he was represented throughout the trial by Mr Mazani of Tadiwa and Associates legal practitioners who even noted the appeal on behalf of the applicant. They disputed that that the record of proceedings was in shambles. Whether they submitted that the applicant and or his legal practitioners never requested for the copy of the record and were not given. They attached a transcript of the record of proceedings that speaks for itself.

This court was not impressed by the conduct of the applicant and his legal practitioner in this application. I say so because the applicant lied and misled the court to believe that the applicant was a self-actor when he was tried by the first respondent. Perusal of the attached transcript of the record of proceedings clearly showed that the applicant was being represented throughout the trial by Mr Mazani of Tadiwa and Associates legal practitioners based at number 6 Harare Street, Harare. It further showed that the same legal practitioners

actually noted an appeal against the decision of the first respondent who went further to give the applicant time limits within which to process his appeal. Secondly if the applicant and his current legal practitioners were not given access to the record of proceedings one wonders how Mr A Mugiya of Mugiya and Macharaga could have noted that the proceedings had not been conducted well and that the record was in shambles?

What is clear is that the applicant's former legal practitioners Tadiwa Associates failed to appreciate that an application for review was supposed to be made within 8 weeks of the decision by the first respondent. They opted to appeal. I therefore did not believe the applicant and his current legal practitioner that the applicant was not legally represented during trial. Further I could not believe them when they said the record was in shambles and that they reserved the right to file supplementary grounds of review if they had been denied access to the record. For Mr Mugiya to formulate the view that the decision of the first respondent warranted to be interfered with he must have had sight of the record.

This application has no merit, was made hopelessly out of time and the prospects of success on review are poor hence it must be dismissed with costs on a legal practitioner and client scale since application is based on falsehoods.

In the result it is ordered that:

1. The application is dismissed.
2. The applicant to pay costs.

*Mugiya and Macharaga Law Chambers*, applicant's legal practitioners

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