

CONSTABLE VUZUWA
versus
THE TRIAL OFFICER, CHIEF SUPERINTENDENT WASARA
and
THE COMMISSIONER GENERAL OF POLICE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 21 March and 28 July 2017

Opposed Application

N Mugiya, for the applicant
K Chimiti, for the respondents

Zhou J: This is an application for review, in which the applicant seeks the setting aside of trial proceedings instituted against him by the respondents and for an order barring the respondents from conducting trial proceedings against the applicant in respect of the allegations for which the applicant was to appear before the first respondent. The application is opposed by the respondents.

In the court application (the form 29) which accompanies the application the applicant states that the application is being made on the ground that:

“1. In terms of the law and in particular the Police Act as read together with the Zimbabwe Republic Police Standing Orders Volume 1 and the uncoded rules, the first respondent was not supposed to have tried applicant in terms of the Police Act.”

Presumably the applicant was attempting to comply with the requirements of r 257 to “state shortly and clearly the grounds upon which the applicant seeks to have the proceedings set aside or corrected and the exact relief prayed for”. The first defect on the applicant’s notice is that the precise relief being sought is not stated. Secondly, the statement recited above which is contained in the court application does not represent a ground of review but an argument. Clearly, what is required is for the applicant to state the grounds of review as they are known under the common law or under statute. I took the opportunity to raise this matter because it is not unique to the applicant’s application, but is a common mistake by

many litigants. Since the respondent did not raise it in the opposing papers I shall leave it at that.

The factual basis of the application is as follows. The applicant was charged with contravening s 35 of the Schedule to the Police Act [*Chapter 11:10*] as read with s 29 of the same Act. The offence stated in the charge sheet is of “Acting in an unbecoming or disorderly manner and in any manner prejudicial to good order or discipline or reasonably likely to bring discredit to the police force.” The charge is predicated on the allegations that on or about 17 July 2015 at or near Bhadhela Wholesalers, along Rezende Street, Harare, the applicant being a member of the Zimbabwe Republic Police wrongfully and unlawfully demanded US\$500 from one Lloyd Tarirai so that he may facilitate his recruitment into the Zimbabwe Republic Police.

A summary of the facts upon which the charge is based is part of the applicant’s papers. It shows that after the applicant demanded payment of US\$500 a trap was set by officers from the Police General Headquarters Internal Investigations Unit. The applicant was given the trap “money” which consisted of \$300 fake notes and a genuine US\$20 note by Lloyd Tarirai. The applicant was arrested upon receiving the trap money. All the trap money was recovered from him.

The applicant submits that he is being charged at the Harare Magistrates’ Court “on the same allegations borne out of the same circumstances.” He has not attached any papers pertaining to the proceedings at the magistrates’ court. What is clear, however, is that while the facts upon which the charge brought against him under the Police Act could also disclose an offence for which he may be charged in the magistrate’s court, the misconduct charge preferred against him as set out in the charge sheet does not represent an offence for which he could appear in the magistrate’s court. Indeed, the applicant has not placed before this court evidence to show that he is facing the same charge before the magistrate’s court. The very terse affidavit filed by the applicant betrays a lack of seriousness. It makes no attempt to respond to the serious allegations, and gives no details of the proceedings which have taken place against him.

In all the circumstances, the application is without merit. It is accordingly dismissed with costs.

Mugiya and Macharaga, applicant’s legal practitioners
Attorney- General’s Office, respondents’ legal practitioners