EX CONSTANBLE TAMANIKWA C 061552
versus
COMMISSIONER GENERAL OF POLICE
and
THE CHAIRMAN OF THE POLICE SERVICE COMMISSION
and
THE MINISTER OF HOME AFFAIRS

HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 26 September, 2017 and 19 December, 2017

Opposed application

N Mugiya, for the applicant
C Siqoza, for the respondents

MANGOTA J: I heard this application on 26 September, 2017. I delivered an *ex tempore* judgment in which I granted the applicant's prayer.

The respondents wrote to the registrar of this court on 24 November 2017. They did so through their legal practitioners of record. They requested for reasons for my decision. These are they:

The applicant, an ex-constable, was, on 6 August 2015, charged with and convicted of contravening para 34 of the Schedule of the Police Act. He was sentenced to 10 days imprisonment. He appealed to the first respondent against both conviction and sentence. The appeal was dismissed. He appealed against the decision of the first respondent to the second respondent who also dismissed the appeal. In-between the two appeals, the first respondent convened a Suitability Board which inquired into the applicant's fitness to remain in the police force. This found him unsuitable as a result of which the first respondent discharged him from the same.

In this application which is one for a declaratur, the applicant raised a number of concerns. His threefold concerns were that:

(i) the first respondent failed to give reasons for upholding the decision of the trial officer who convicted and sentenced him to 10 days imprisonment;

(ii) the first respondent contravened s 51 of the Police Act when he set up a Suitability Board to inquire into his fitness to remain in the police force and proceeded, on the recommendations of the Board, to discharge him after he had filed his appeal with the second respondent;

(iii) the second respondent did not give reasons for dismissing his appeal.

He submitted that the abovementioned concerns were of such a serious magnitude as to entitle me to declare that the proceedings which preceded his discharge from the police force were a nullity.

The first two respondents opposed the application. The third respondent did not. The assumption was that he chose to abide by the decision of the court.

The first two respondents did not deny the allegations which the applicant levelled against them. It is an accepted fact that what is not denied in affidavits is taken as having been admitted. [See *Fawcett Security Operations* v *Director of Customs & Excise*, 1993 (2) ZLR 151 (D); *DD Transport (Pvt) Ltd* v *Abbot*, 1988 (2) ZLR 92 and *Remo Investment Brokers* v *Securities Commission of Zimbabwe* SC 13/13].

The record shows that none of the respondents who opposed this application gave any reasons for the decision which he took. The second respondent, for instance, gave a very lame excuse on that aspect of the case. He submitted that reasons for the decision which he made would have been furnished to the applicant on the latter's request of them. The first respondent did not allude to that matter at all.

It is grossly irregular, injudicious and totally contrary to court work for a judicial officer not to provide reasons for the decision which he makes. Reasons are a *sine qua non* aspect of any work of a judicial officer or of anyone who seats in the capacity of a quasi-judicial officer. They are not availed to the affected person on request. They should simply be availed to him with, or without, him asking for them. The reasons so furnished would enable the person against whom the decision is made to abide by it or to take whatever action he deems necessary as regards his fate.

Without reasons which persuaded the respondents to dismiss the applicant's appeal, each in turn, it cannot be said that the applicant's trial before the court *a quo* was in accordance with real and substantial justice. That fact alone renders the entire chain of proceedings a complete nullity. They were so gross as to be incapable of being allowed to stand.

Section 51 of the Police Act states, in clear and categorical terms, that the applicant's appeal to the second respondent against the decision of the first respondent automatically suspends the decision of the latter. It reads:

> "A member who is aggrieved by any order made in terms of section *forty-eight* or *fifty* may appeal to the Police Service Commission against the order within the time and manner prescribed and the order shall not be executed until the decision of the commission has been given (emphasis added).

Notwithstanding his knowledge of the above cited piece of legislation, the first respondent proceeded to set up a Suitability Board which he charged with the duty of inquiring into the applicant's fitness to remain in the police force. He convened the Board in complete violation of the section which, as is evident, is peremptory. Not only did he do so. He also acted on the recommendations of the Board and discharged the applicant before the second respondent's decision was at hand.

The first respondent has a team of law officers who work under his command. These officers are not in his department for cosmetic purposes. They advise him of what to, and what not to, do in any given situation. His violation of the law in the presence of legal minds who work under him cannot be condoned let alone accepted.

The first respondent should have known that the applicant's appeal to the second respondent suspended his decision. He should, therefore, have allowed the applicant to remain at work pending the second respondent's decision. He, contrary to the dictates of the law, arranged for the applicant's discharge from the police force and did actually proceed to discharge him.

I regard the conduct of the two respondents as a callous disregard of the law. I walked their legal practitioner on their unwholesome conduct at the time of the hearing of this application. She conceded that what occurred to the applicant should not have occurred. She, in fact, stated to my satisfaction, that the respondents should have given reasons for their respective decisions.

I, therefore, received the legal practitioner's letter of 11 December 2017 with some disquiet. She intimated, in the letter, that she requested for reasons and judgment to assist her "in the drafting of her client's notice of appeal". Whatever the respondents' appeal aims at achieving remains a matter for anyone's guess.

It is within the rights of a party who appears before a court to appeal the decision of the court *a quo*. However, an appeal should not be filed just for the sake of it. It should, in my

view, be filed where there is a genuine effort on the part of the aggrieved party to test the correctness, or otherwise, of the court *a quo*'s decision.

Where a party concedes that it broke the law left, right and centre, that it did not adhere to the standard which relates to the work of a judicial officer and that what it did is repugnant to justice, one remains wondering what the appeal will serve other than to have the time, energy and effort of the court of appeal put to complete waste.

In *casu*, the respondents embarked upon what is a kin to a military-like style of justice. This violated the rights of the applicant in an unforgivable manner. The declaration which the applicant moved the court to grant to him is well deserved.

The applicant proved his case on a balance of probabilities. The application is, therefore, granted as prayed.

Mugiya & Macharaga Law Chambers, applicant's legal practitioners
*Civil Division of the Attorney General's Offi*ce, respondents' legal practitioners