

EX-CONSTABLE MACHETU
versus
THE COMMISSIONER GENERAL OF POLICE
and
THE CHAIRMAN OF THE POLICE SERVICE COMMISSION
and
THE MINISTER OF HOME AFFAIRS

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 23 March and 28 July 2017

Opposed application

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

ZHOU J: This is an application for a declaration that the first and second respondents' failure to furnish the applicant with reasons for their decision is unlawful and wrongful. The applicant also seeks to setting aside of his discharge from the Zimbabwe Republic Police, and for an order that he be reinstated to his employment as a police officer, together with costs of suit on the higher scale. The application is opposed by the respondents.

In his founding affidavit the applicant states that he was charged with and convicted of contravening paragraph 35 of the schedule to the Police Act. He was sentenced to pay a fine. He appealed to the first respondent against his conviction and sentence. That appeal was dismissed. The applicant does not state the dates on which the trial took place. He states, however, that on 10 May 2016 he was discharged from service. He received the discharge notification on 12 May 2016. On 18 May 2016 he filed a notice of appeal against his discharge from the ZRP. His contention is that the effect of his appeal is to reinstate him to his employment.

On 23 August 2016 the applicant's appeal was dismissed. The decision to discharge him from the ZRP was thereby upheld.

The applicant takes issue with the failure by the respondents to furnish the reasons for the decisions pertaining to his appeals. He also submits that the second respondent's commission is not properly constituted and is an unconstitutional body. The grounds upon

which it is alleged that the Police Service Commission is not properly constituted are not set out in the affidavit. There is only the unsubstantiated allegation which is insufficient to justify the relief which is being sought. It is also not stated as to why the applicant alleges that the Police Service Commission is an unconstitutional body. Section 222 of the Constitution establishes that Commission.

Regarding the reasons for dismissal of his appeal the second respondent explains that the appeal was filed out of time. The applicant did not provide evidence of a request for such reasons. It is difficult to explain how a party who is legally represented could make verbal engagements with a body that has determined and dismissed his appeal. In any event, that fact alone would not justify the setting aside of his dismissal and his reinstatement to employment in the face of an extant order for his discharge.

For the above reasons the relief sought cannot be granted.

The application is accordingly dismissed with costs.

Mugiya & Macharaga, applicant's legal practitioners
Attorney-General Office, respondents' legal practitioners