

EX-SERGEANT KUVENGAWAFA 064002R
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, 21 March and 28 July 2017

Opposed application

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

ZHOU J: The applicant is seeking an order in the following terms:

- “1. The 1st and 2nd respondents’ failure to furnish the applicant with reasons for their decisions is unlawful and wrongful.
2. The applicant’s discharge from the police service is accordingly set aside.
3. The respondents are ordered to reinstate the applicant into the police service forthwith.
4. The respondents are ordered to pay costs of suit on a punitive scale.”

The basis of the application is that the applicant was discharged from the police service on 9 March 2015. The applicant states that he received the communication on 17 February 2016. He filed a notice of intention to appeal and grounds of appeal on 18 February 2016. His contention is that the effect of his notice of appeal was to suspend the decision to discharge him from the Zimbabwe Republic Police. He complains that the respondents did not reinstate him. On 23 August 2016 he received notification from the second respondent that his appeal had been dismissed. He states that he made a verbal request for the written reasons for the dismissal of his appeal.

The application is opposed by the respondents on the basis that the applicant’s appeal was properly dismissed on 15 September 2016.

It is common ground that the decision in terms of which the applicant's appeal was dismissed has not been challenged. That decision remains extant, which means that the applicant stands dismissed from the Zimbabwe Republic Police. No basis, factually or legally, has been established for the applicant to be reinstated. Mr *Mugiya* for the applicant argued that in between the making of the discharge order and the determination of his appeal the applicant ought to have been reinstated. The failure to reinstate him then was unlawful, and for that reason the appeal decision also became unlawful. That is not a legally sound argument. The applicant, if he was so advised, could have sought relief only in connection with that period to which his complaint related. That is not the basis of his present application. It was only raised in argument.

As for the alleged improper constitution of the second respondent, no evidence was placed before the court to support that bare allegation. In fact, even the affidavit does not state the basis upon which it is alleged that the second respondent is no properly constituted.

The reasons for the dismissal of the appeal would be contained in the record of proceedings, which the applicant has not requested. Further, the applicant is in substance seeking the setting aside of his dismissal and his reinstatement without challenging the decision in terms of which his appeal was dismissed.

In all the circumstances, the application is without merit.

In the result, the application is dismissed with costs.

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