

MAVIS MUZAMANI  
versus  
THE MANAGING DIRECTOR HR (E. PHIRI) - PUBLIC SERVICE COMMISSION  
and  
THE SECRETARY –PUBLIC SERVICE COMMISSION  
and  
THE CHAIRMAN OF THE PUBLIC SERVICE COMMISSION

HIGH COURT OF ZIMBABWE  
TAGU J  
HARARE, 30 May and 13 September 2017

### **Opposed Application**

*N Mugiya*, for the applicant  
*T Shumba*, for the respondents.

TAGU J: This application for a declaratur seeks the following relief:

**“IT IS ORDERED THAT**

1. The Applicant be and is hereby allowed to join the Public Service Commission and capable of being employed as a teacher if she meets the desired job description.
2. The Respondents’ conduct against the Applicant be held to be unlawful and wrongful.
3. The Respondents to pay costs of suit on a client –attorney scale.”

The facts as shown on the founding affidavit are that the applicant was employed by the Ministry of Home Affairs as a police officer for six years twenty-seven days. She was discharged by the Public Service Commission. She does not state when she was discharged but said no reason for her discharge was given. She decided to go to a teaching college and she obtained a diploma in teaching with Bondolifi Teachers College in August 2015. On 15 September 2015 she applied to the Public Service Commission so that she could be appointed as a teacher after she could not be appointed directly like any other applicant.

She said on 29 October 2015 the Managing Director Human Resources one E. Phiri of the Public Service Commission wrote a letter to her denying her that opportunity and again no reasons were given. She however, attached a copy of the letter which stated among other things that she was discharged as being “unfit for Police Duties” on 20 September 2010. On 18 February 2016 she wrote a letter to the respondents to the effect that she was entitled to in terms

of the law to be employed as a teacher and that there was no reason to bar her. On the 11<sup>th</sup> day of May 2016 the respondents replied and turned down her application to join the Public Service Commission. She attached a copy of the letter that says among other things:

“...the Public Service Commission upholds its decision to turn down Ms M. Muzamani’s application for appointment into the Public Service Commission due to the fact that she does not possess qualifications that fall in the critical manpower shortage areas.”

She said was advised by her defence counsel that the respondents’ conduct is a violation of her fundamental right, hence she approached this court so that the due process of law could be followed so that her rights could be restored since the respondents have no reason at law to prohibit her from being employed as a teacher, and that she has no conviction in terms of the ordinary law.

The respondents opposed the application. At the hearing of this matter the respondents raised two preliminary points and prayed that the application be dismissed. The first point *in limine* is that the citation of the respondents is wrongful and fatally defective. In this regard the respondents made reference to the position enunciated in *Maxwebo v Chairman Public Service Commission* HH-125-97 at pp 6-7 of the cyclostyled judgment where SMITH J stated as follows:

“Before concluding, I wish to make an observation on the party cited as respondent. The Chairman of the Public Service Commission was so cited. Section 74 (now section 202 of the new constitution) of the constitution establishes the Public Service Commission which consists of the Chairman and not less than seven other members. Any findings, rulings or decisions of the Public Service Commission are those of the body and not of the Chairman. Accordingly, the Chairman of the Public Service Commission cannot do anything in the name of the Commission if the majority of members do not agree with him. The distinction is illustrated by the order sought by the applicant. The draft order states that the respondent’s decision to find the applicant guilty was not a decision of the respondent. It was a decision of the Public Service Commission. I therefore consider that it was improper to cite the Chairman as respondent. The Public Service Commission should have been cited as respondent.”

See also *Matida v Chairman, Public Service Commission and Anor*, 1998 (1) ZLR 507 (H) wherein ADAM J held that in a case where the applicant is seeking to have the decision of the Public Service Commission reviewed, the Public Service Commission must be cited as the respondent and not the Chairman of the Public Service Commission as in the present case.

In *casu* the respondents argued that the applicant is seeking a review of the conduct of the Public Service Commission and it goes without saying that the Public Service Commission should have been cited as the respondent.

The second point *in limine* related to the applicant's founding affidavit. They said the founding affidavit was fatally defective, and it is unorthodox to file a certified copy of an affidavit.

Mr *Mugiya* opposed the preliminary points and said as regards the citation of the respondents it was proper. He said the Supreme Court in the case of *Gula-Ndebele* held that the citation of the Chairman of the Public Service was proper because the letters "N.O." had been used to suggest he was not cited in his personal but official capacity. As regards the founding affidavit he said there was no formular of the stamp to be used by a commissioner of oaths.

In the present matter I noted that the words "N.O." were not used. It is my respective view that the respondents were not properly cited and this is fatal to the application. Again I noted that the founding affidavit is a certified copy of the original as shown by the stamp. To that extent I again agree with the respondents that the founding affidavit is fatally defective. I will therefore uphold the preliminary points and dismiss this chamber application without dealing with the merits of the application.

In the result it is ordered that:

1. The application is dismissed.
2. The applicant to pay costs of suit on the ordinary scale.

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