

SERGEANT MANDE 047375T
and
CONSTABLE MHAKA O 081215B
versus
THE CHAIRMAN OF THE POLICE SERVICE COMMISSION
and
THE COMMISSIONER GENERAL OF POLICE
and
THE MINISTER OF HOME AFFAIRS

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

OPPOSED APPLICATION

N Mugiya, for the applicants
T Shumba, for the respondents

TAGU J: This is an application for a declaratur. The applicants want this Honourable Court to make a declaration that the refusal or failure to reinstate the applicants to the Police Service by the respondents be and is hereby declared to be unlawful, wrongful, and that the respondents be ordered to pay costs of suit on a punitive scale.

The facts giving rise to this application are that on 17 July 2015 the applicants who are former members of the Zimbabwe Republic Police were charged and convicted for contravening paragraph 27 of the Schedule to the Police Act [*Chapter 11:10*] as read with section 34 of the said Act. They were sentenced to seven (7) days at the detention barracks. They appealed to the Commissioner- General of Police against their conviction and sentence in terms of section 34 (7) of the Police Act. The Commissioner-General upheld the conviction and sentences and turned down their appeal. A board of suitability was convened in terms of section 50 of the Police Act, and it discharged the applicants from the Police Service.

The applicants again appealed to the Commissioner –General of Police against their discharge from the Police Service in terms of section 51 of the Act and again their appeal was dismissed. They had in the meantime made a request to be reinstated to the Police Services Commission while their appeal was being heard but this request was turned down. Their salaries and benefits were ceased.

They filed an urgent chamber application with this Honourable Court against the decision of the Commissioner – General of Police in case HC 8103/16. The urgent chamber application was ruled not urgent and the case was struck of the roll of urgent matters. They then lodged this chamber application for a declaratur whose reliefs are stated above.

This chamber application was opposed by the respondents. At the hearing of this matter the respondents took a point *in limine* and asked the court to dismiss the application on that basis alone. The point *in limine* raised by the respondents is that the founding affidavit relied on by the applicants in their chamber application was fatally defective because it was stamped with a certifying stamp, and should have been commissioned by the commissioner of oaths.

The respondents submitted that the application stands or falls on the founding affidavit filed of record.

Mr *Mugiya* opposed the point *in limine* and stated that stamps used by commissioners of oath have no formula such that a legal practitioner as an officer of the court can use any stamp. He attacked the counsel for the respondents for not stating the law that says this founding affidavit is not competent.

A perusal of the founding affidavit clearly shows that the founding affidavit upon which the applicants rely on their application shows that the founding affidavit was certified as a true copy of the original.

I do not agree with the counsel for the applicants that a commissioner of oath can use any other stamp, other than a stamp that shows that the affidavit was properly commissioned by a commissioner of oath. Mr *Mugiya* did not cite any law that says a commissioner of oath can use any stamp and that the stamp has no formula.

In my view the point *in limine* has merit. The founding affidavit relied on by the applicants is fatally defective and an application stands or falls on the papers filed of record. For this reason the chamber application is dismissed without dealing with the merits.

In the result it is ordered that-

1. The chamber application is dismissed.

Mugiya & Macharaga Law Chambers, applicants' legal practitioners

Civil Division of the Attorney General's Office, respondents' legal practitioners