TAURAI GUVEYA

Versus

ZIMBABWE REPUBLIC POLICE
LEGAL SERVICES, SOUTHERN REGION

IN THE HIGH COURT OF ZIMBABWE
MABHIKWA J
BULAWAYO 4 FEBRUARY 2020

Court Application

Applicant in person
Ms B. T. Nyoni for the respondent

MABHIKWA J: For good reason, I will endeavor to outline the brief history of this matter, it is as follows;

On 9 January 2017 at around 0730 hours and at the intersection of Fife Street and Leopold Takawira Avenue in Bulawayo, one Sitshengisiwe Guveya was driving a Mazda Bongo, registration number 4646. She was arrested by the police.

On 11 January 2017, she was served with summons directing her to appear at the Tredgold Magistrates' Court in Bulawayo. The next day on 12 January 2017, she was charged with;

(1) Attempted murder
(2) Failure to comply with police instructions
(3) Use of cell phone while driving

It appears that ultimately, she was charged with two (2) counts only. In count 1, she was charged with the use of a cellphone whilst driving in contravention of section 16B (1) of the Road traffic Amendment 2002/09 (SI 299/02). In count 2, she was charged with failure to comply with the instructions, oral or by signal, given by a police officer in uniform controlling traffic as defined in section 43 (1) (B) of the Road Traffic Regulations 305/74.

The brief facts were that police details were enforcing traffic regulations at the said intersection. Sitshengisiwe approached the intersection and the police observed that she was using her cellphone whilst driving. They signaled her to

stop but she failed to comply with that instruction. The state in that case was represented by Constable Nyevedzanai as one of the officers at the intersection.

According to the applicant's papers it appears that Sitshengisiwe was convicted of failing to comply with police instructions when signaled to stop. The applicant has insisted that Sitshengisiwe, who is a nurse at Esigodini Hospital and resides in Habane Township, is his wife and that she was driving his vehicle when she was arrested.

It appears also, that some six (6) months or so later, and perhaps at the instigation of the applicant, Constable Nyevedzanai was himself tried and convicted of malicious damage to property and assault. He was sentenced to pay a fine of $200 in default of payment, two (2) months imprisonment.

Thereafter, it appears that Constable Nyevedzanai was later charged under the Police Act (Chapter 11:10) for contravening paragraph 35 of the Schedule to that Act. This was obviously an internal administrative disciplinary hearing. He was found guilty and sentenced to pay a fine of $10,00.

The applicant has filed this application and submits in his "affidavit" that he needs it in a "condonation review appeal case". He argues in paragraph 5 that he "believes that the transcript, as documentary evidence will absolve Sitshengisiwe Guveya in her conviction of failure to stop". He is obviously referring to the conviction of Sitshengisiwe by the Magistrates' Court some months or years earlier. The applicant seeks an order that;

"(a) The applicant be and is hereby granted;

(b) The respondent be and is hereby compelled to release the trial transcript in respect of Constable Nyevedzanai Kennias.

(c) Costs of suit."

Having chronicled the above events and the relief sought by the applicant, I must say from the onset that it is clear that the applicant has not established, firstly in what capacity or legal basis he seeks to file a "condonation review appeal case" to reverse Sitshengisiwe Guveya's conviction that he talks about in his affidavit. He has also not laid down the law that entitled him to represent or act on behalf of Sithsengisiwe notwithstanding the fact that she may be his wife. It appears from the bulk of the papers, that applicant has throughout the cases, consistently pushed to act on behalf of his wife. That is improper. Sitshengisiwe herself, if she so wishes, should make the application, write and swear to

affidavits, make the appeals and so on. Section 51 of the High Court Act, Chapter 7:06 is clear on the right of audience. It states;

> "51. **Right of audience**
>
> Subject to section fifty, rules of court and any other law, in all proceedings before the High Court the parties may appear in person or be represented and appear by any legal practitioner registered in terms of the Legal Practitioners Act, (Chapter 27:07). "See also the Legal Practitioners Act.

Further and similarly, the applicant has not shown the legal basis upon which he demands and then makes an application asking this court to compel the police force legal services, to release to him the trial transcript in the disciplinary hearing of Constable Nyevedzanai so that he can use it in his purported "review or appeal" to reverse his wife's conviction in her own trial some months or years earlier. Applicant himself was not a party to the criminal proceedings in which he intends to file either a condonation for review or an appeal. He was also not a party to the disciplinary hearing conducted by the Zimbabwe Republic Police against Constable Nyevedzanai. In any event, when he requested the record of proceedings for the disciplinary hearing, the applicant was advised in writing that he was not entitled to the record of proceedings unless he was a party to the proceedings.

I am inclined to agree because in my view, disciplinary hearings and tribunals of organisations are generally not for public records and consumption. However, parties to the proceedings would obviously be entitled to the record of proceedings for their own records and for purposes of appeal or review. All that the applicant needed to do was to ask his wife to request the said record of proceedings.

In *Hughes and Anor* vs *Chairman, Executive Committee, Health Professions* 1996 (1) ZLR 393 (H) the court rightly quoted with approval. Rose Innes, Judicial Review of Administrative Tribunal in South Africa where the learned author states that;

> "A review of administrative proceedings, like any other litigation, lies at the instance only of a person who has a sufficient interest in the proceedings. The policy of the law is to exclude from litigation, persons whose interest is <u>academic or indirect</u> and <u>who are not themselves touched by a direct and real grievance which needs to be remedied.</u>" (the emphasis is mine)

In *Sibanda* vs *Crumbo & Anor* 2010 (2) ZLR 484 (H). The parties disclosed in urgent chamber proceedings in the High Court that the applicant had entered into a lease agreement with the wife of the 1st respondent. She was the registered owner of the property. She had gone out of the country. When the applicant failed to pay rent for the leased premises, the 1st respondent issued summons in which he sought an order in the Magistrates' Court for eviction. It was held per MATHONSI J (as he then was) that the 1st respondent had no *locus standi in judicio* in the Magistrates' Court wherein he had been the plaintiff. The learned judge held that;

> "The 1st respondent is not the registered owner of the rented premises. He was not a party to the lease agreement concluded between this wife and the applicant. This claim that he filed was based on a lease agreement he was not party to. In my view, he did not have *locus standi in judicio* to sue for the eviction of the applicant in his own name. His marriage to Karen Zakeyo did not give him contractual or vindicatory rights of whatever nature. See *Musvene* vs *Makanza* 2004 (2) ZLR 262 (H)"

In fact in *Muswere* vs *Makanza* 2004 (2) ZLR 262 (H) quoted above, on 25 October 2002 Mr Makanza sold his home in Mutare, relocated to his rural home in Nyanga and invited his wife to join him there. She turned down the invitation on the ground that she was still employed in Mutare and could not conceivably commute to and from work from Nyanga. She refused to join him and remained in the house. Musvete (the buyer) sought an order for her eviction. Mrs Makanza made a counter application and sought an order setting aside the sale and declaring her co-owner of the property. At the hearing the applications were consolidated for one hearing. It was noted that at that stage, although relations between the parties were strained, there were no divorce proceedings pending or contemplated. The court held that Mrs Makanza had no *locus standi in judicio* to counter sale for the relief she was seeking in her application. Although at termination of a marriage by divorce and by death, both family law and the law of inheritance recognizes the matrimonial estate which is then distributed between the spouses or inherited by the surviving spouse regardless of whose name appeared on the deed confirming title to the property, a spouse cannot stop the other from selling the matrimonial home or any other immovable property forming the joint matrimonial estate simply by virtue of marriage if the property is registered in that others spouse's sole name.

I am inclined to agree with the respondent that applicant makes rather a henious assertion that his wife stands to suffer irreparable damage as she was not

afforded the chance to be defence for the accused in the disciplinary trial. He fails to substantiate the prejudice which he himself stands to suffer if the trial proceedings are not availed to him. He has only mildly and in fact strangely referred to himself as "the complainant" at page 4 of his purported affidavit. From the history outline above, it is difficult to fathom how he refers to himself as "the complainant" and in which matter.

I am inclined to hold also that whilst I appreciate that the applicant is a self-actor not schooled in law generally, and in the rules of court, he, as counsel for the respondent submits, chose a strange and novel way of filing his application. The form he used is not provided for by the rules of court. It is difficult to tell what form, if any was used or was intended to be used. The application itself was so hapharzadly and confusingly made. I must reiterate that the case of *Tsvangirayi & Anor* vs *Registrar General & Ors* 2002 (1) ZLR 251 (H) cited by the respondent was pertinent that;

> "A court has no general jurisdiction to intervene in administrative decisions or to direct administrative authorities on how they should act. The discretion bestowed on an administrative authority cannot be interfered with in the absence of illegality, irrationally or procedural inappropriate".

Consequently, in the absence of any power of attorney or some authority to act on behalf of Sitshengisiwe Guveya, and without showing that he has a direct interest and is himself touched by a direct and real grievance which needs to be addressed, applicant has no *locus standi in judicio* in this matter. The mere fact of his marriage to Sithsengisiwe, which in any event was simply alleged without any proof but was not disputed by the respondent, does not counter confer to him rights, authority or *locus standi* to sue or act on her behalf. He has failed to show "sufficient interest in the proceedings" as contemplated by law.

Accordingly, the application is dismissed.

Civil Division of the Attorney General's Office, respondent's legal practitioner