

WELINGTON MAZHINDU

Versus

CHAIRPERSON POLICE SERVICE COMMISSION

And

COMMISSIONER GENERAL POLICE

And

CHIEF SUPERITENDENT MANQANDI

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 2 MARCH AND 16 JULY 2015

Opposed Court Application for Review

Applicant in person
L. Musika for the respondents

KAMOCHA J: The order that is being sought by the applicant reads thus:

“It is ordered

1. That the decision to discharge the applicant is hereby reversed.
2. That 1st and 2nd respondents reinstate the applicant into the Police Force with all his benefits which he lost during the unlawful dismissal.”

The applicant was a sergeant in the Zimbabwe Republic Police for a period of not less than 10 years.

The circumstances giving rise to this case maybe summerised as follows:

Applicant was a member of a burial society called Glory of God Burial Society in Bulawayo. By virtue of being a police officer members of the burial society reposed some trust in him and elected him treasurer. His duties *inter alia* were to keep cash float at his home to be

used in the event of sudden bereavement of members of the society. On 8 August, 2009 the society entrusted him with the sum of US\$550,00 and ZAR 3 300,00.

When members of the society held a meeting at the end of August 2012 to take stock of the financial status of their society, applicant absented himself.

Members of the burial society began to look for him. One Happymore Charamba stated that he tried to phone the applicant on his mobile phone but applicant switched it off. Applicant could not even be found at his home. When he was eventually found, he confessed that he has used all the money but promised to repay it all by 5 October, 2012. He, however, failed to repay the money on that day.

He appeared before the Police Disciplinary Board facing a charge of contravening section 35 of the schedule to the Police Act [Chapter 11:10] as read with section 34 of the said Act.

“Acting in an unbecoming manner reasonably likely to bring discredit to the Police Force”. He pleaded guilty and had this to say in mitigation:-

“I am a member of the force who has served for 10 years with a clean record of service. I am a widower who lost his wife recently. I have two children to look after. I am sorry for what I did. My wife fell sick whilst I was in custody of the money and used the money to take her to hospital but unfortunately she died.”

The applicant was sentenced to a fine of ten dollars. Before the trial officer sentenced him, he took into account the applicant’s plea of guilty; what he said in mitigation; was remorseful and contrite and cumulatively held that these facts were extenuating.

The applicant was supposed to appear in the magistrate court but the case against him was dropped on humanitarian grounds after Happymore Charamba had filed the following affidavit of withdrawal.

“On the fourth day of December, 2012 I reported a case of theft against Wellington Mazhindu under Mzilikazi CR 71-12-12. I now wish to withdraw the charges against him considering that he had agreed to pay back the money of which he has already paid \$400,00. I also put into consideration that he is a family member of the church. I won’t pursue the matter in future as I have voluntarily elected to withdraw.”

Quite clearly the withdrawal was based on the fact that applicant was admitting stealing the money and was willing to pay it back and had even already paid part of it i.e. \$400,00. It would be, therefore, false to suggest that the case was dropped on the basis that applicant had not committed the offence.

This court holds that a member of the police force who is entrusted with the custody of money of a burial society or any organisation and breaches the trust by stealing the money is guilty of acting in an unbecoming manner reasonably likely to bring discredit to the police force. The applicant was elected treasurer of the burial society by virtue of the fact that he was a police officer. He is more than likely to have brought the police force into disrepute. Any dishonest officer is not worth to remain in the organisation. The Commissioner General of Police was entirely correct in relieving applicant of his duties as a police officer.

As an afterthought applicant complained that there was nothing criminal about what he did as members of the burial society had agreed that in cases of bereavement, a member could get an overdraft which he or she would pay in instalments. Needless to say he did not do that. He did not approach the burial society for an overdraft. He just decided to use the money without even informing the burial society. When a meeting was called for him to give the treasurer’s statement about what was in the coffers of the burial society he absented himself. Thereafter he became elusive and evaded officials of the burial society. His afterthought was clearly without merit as it is false. It does not need any serious consideration and is hereby dismissed.

In the result, the application is hereby dismissed.

Civil Division of the Attorney General’s Office respondent’s’ legal practitioners