

CONSTABLE NCUBE J 079022S
and
CONSTABLE GUZHA 069541M
versus
THE POLICE SERVICE COMMISSION
and
THE COMMISSIONER GENERAL OF POLICE

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 5 JULY 2017 AND 3 AUGUST 2017

Opposed Matter

N Mugiya for the applicants
L Musika for the respondents

MOYO J: This is an application for the review of the second respondents' decision to discharge the two applicants from the police force.

The gist of the application is that the second respondent discharged the applicants from the police force irregularly as the applicants were discharged without following the provisions of the Police Act [Chapter 11:10] which stipulates that a board of suitability had to be convened first. First applicant, in her founding affidavit states that the two applicants were charged under the Police Act (*supra*) and that they appeared before a single officer. They were convicted and sentenced to ten days imprisonment.

The grounds for review as stated on the face of the application as well as the founding affidavit are that the actions of the two respondents were irregular in that they dismissed them (the applicants) from the police force without first convening a board of suitability in terms of the Act. The respondents have contended that the two applicants were still on probation and therefore their dismissal was in terms of section 50 (4) of the Police Act which provides as follows:

“If the commissioner is of the opinion that a regular force member who has not completed a probationary period or who has not been re-engaged for continuous service is unfit to retain his rank, or remain in the police force he may discharge the member.”

It is contended on behalf of the respondents that the Police Act specifically deals with a discharge of those members who are still serving their probation in section 50 (4) and that therefore neither the second nor the first respondent acted unlawfully since it is common cause that the two applicants were indeed convicted of an offence during their probation, causing the second respondent to invoke his powers in terms of section 50 (4).

In their heads of argument, applicants have thrown in new grounds of review namely:

- (b) whether or not the *audi alteram partem* rule principle was complied with.
- (c) whether or not the applicants were furnished with reasons for the decision by the respondents to discharge them from the service.

The two additional grounds are not enunciated in the face of the application neither has a factual basis been laid for them in the founding affidavit. An applicant in an application for review and in the founding affidavit, should provide the factual basis upon which the grounds are formulated. All the applicants tell us is that no board of suitability was convened, that is their main gripe with the commissioner general's actions.

An application stands and falls by the contents of the founding affidavit which should be elaborate on the foundation of the case. Refer to *Alfred Muchini v Mary Adam and Others* SC 47/13.

I will therefore confine my determination to the grounds as given in the court application.

It is common cause that the two applicants were on probation during the time this whole issue occurred. It is also common cause that they were convicted of an offence during their probationary period.

The Police Act Section 50 (4) provides as follows

“If the commissioner is of the opinion that a regular force member who has not completed a probationary period ---- is unfit to retain his rank or remain in the police force, he may (a) discharge the member ----.” (Emphasis mine)

Obviously in its wisdom the legislature saw it fit to give the commissioner unfettered powers to dismiss summarily an employee who is on probationary period for the simple reason that the employer is on probation, he/she is still being tested as to their suitability or otherwise, meaning that if the employer deems the employee unsuitable then he/she is within his/her rights

to terminate the relationship as the relationship itself is a trial. It is not permanent. The Online Merriam- Webster dictionary defines probation as:

“the subjection of an individual to a period of testing and trial to ascertain fitness (as for a job or a school.)”

The Online Business Dictionary defines probation as:

“Testing of a candidate before admission to a full employee of a firm.”

This, in my view is precisely the reason why the legislature crafted section 50 (4) of the Police Act to render the administration issues pertaining to the discharge of employees on probation simpler and quicker as they are not full employees.

To say the Commissioner General erred or irregularly discharged the applicants from the police force when he used the powers bestowed upon him by the Police Act would be unfounded for the Commissioner General of the police force exercised the powers he has in terms of the law, and nothing has been shown in this application that he did so unlawfully or irregularly.

The High Court exercises review powers on proven grounds for doing so but it does not run or administer the police force. This court will exercise review powers only where a case has been made for the relief sought. This court does not otherwise oversee the operations of the police force, neither does it supervise the Commissioner General and the Police Service Commission.

These are offices created by the Constitution with the full powers to run and administer the police force. Junior police officers should conform to the rules and expectations of their employer. In this case the two applicants were on probation, and they were indeed convicted of theft during their probationary period, and the Commissioner General then as a result declared them unsuitable to be in the police force in terms of section 50 (4) there is absolutely no reason to expect the High Court to invoke its review powers on such a straightforward issue and come to their rescue. This court will only intervene on substantive grounds of gross irregularities on the unreasonableness of a decision. It cannot be every decision that the Commissioner General makes that qualifies in those respects which is why I hold the view that the police officers seem to believe that powers to administer the police force are vested in the High Court, yet they are entirely in the Commissioner General and the Police Service Commission.

This application is totally without merit and in fact borders on abuse of court process. It is for these reasons that I will dismiss the application.

It is ordered that:

The application be and is hereby dismissed with costs.

Mugiya and Macharaga Law Chambers, applicants' legal practitioners
Civil Division, Attorney General's Office, respondents' legal practitioners