

CONSTABLE MASUKUME P
versus
THE TRIAL OFFICER (SUPERINTENDENT SIBANDA J)
And
COMMISSIONER GENERAL OF POLICE
And
ATTORNEY-GENERAL

HIGH COURT OF ZIMBABWE
HUNGWE J
HARARE, 4 DECEMBER 2013

Urgent Chamber Application

N Mugiya, for the applicant
C Karinga, for the respondents

HUNGWE J: This matter was placed before me through the Chamber Book. The applicant is a serving member of the Zimbabwe Republic Police. She seeks the following interim relief as a matter of urgency;

“INTERIM RELIEF GRANTED

1. The respondents are barred from detaining the appellant until and unless the 2nd respondent gives a decision to the appeal before him on merit and that decision must be served on the applicant’s legal practitioners.
2. The appeal record be and is hereby regarded as complete and the decision of the 2nd respondent to treat the applicant’s appeal as abandoned is hereby set aside.
3. All processes by the applicant be deemed to have been filed with the 2nd respondent within time.”

When the parties appeared before me on the date set down for the hearing of the application, counsel for the applicant made serious allegations against the respondents which, if true, created an impression that the applicant’s right to a fair hearing were seriously

breached. I could not ignore the allegations nor did it seem fair to accept the same on the record without affording the respondents the right of reply. I directed that further affidavits be filed in answer to the allegations and the applicant replies to such further affidavits as the respondents may file. Thereafter I directed that parties file heads of argument addressing the pertinent issues which I spelt out before I set the matter down for continuation. The matter was postponed to 17 September 2013 for the filing of both the further affidavits and heads of argument. By 13 September 2013 only the affidavits had been filed. I asked the registrar to advise both parties to file their heads within fourteen days from 11 October 2013 with the applicant filing hers first. She not do so. The proceedings stalled. Respondents then wrote to the registrar expressing their frustration with applicant and her legal practitioners. Respondents also asked that the matter be decided on the papers on the record and indicated that they were eager to have the matter finalised.

A perusal of the further affidavits filed by both parties show the following;

- a. The applicant's application is founded on untrue claims regarding how the respondents had behaved, which is the basis of this application.
- b. The applicant has no answer to the factual averments which give a lie her claims regarding several factual issues which cast aspersions on the integrity of the second respondent's officers.
- c. Applicant filed an amended provisional order without any explanation as the reason for abandoning her initial provisional order.
- d. Deponent to applicant's answering affidavit filed after my directive may have perjured herself in the affidavit she filed in support of this application. This could be the reason why no-one from the law firm concerned wish to distance themselves from this application. This conduct is highly unprofessional and deplorable and requires censure.

In these circumstances the matter must be considered abandoned by the applicant. It is therefore dismissed with costs on a legal practitioner client scale *de bonis proprii*.

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