

**TAWANDA TALKMORE GUZHA**

**VERSUS**

**CHAIRMAN OF THE POLICE SERVICES COMMISSION N.O**

**AND**

**COMMISSIONER GENERAL OF POLICE N.O**

**AND**

**CO-MINISTERS OF HOME AFFAIRS N.O**

**AND**

**CHIEF SUPERITENDENT MBEKO KUNENE N.O**

**AND**

**SUPERITENDENT MAPIYE N.O**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 30 MARCH 2012 AND 28 JUNE 2012

Applicant in person  
No appearance for respondent

Opposed matter

**MAKONESE J:** The Applicant filed an Application for review on the 14<sup>th</sup> September 2011 against a decision to discharge him from the Zimbabwe Republic Police.

The relief sought by the Applicant in the Draft order is in the following terms:

- “(1) The dismissal of Applicant from the Zimbabwe Republic Police be and is hereby reversed.
- (2) That Applicant be reinstated into the Zimbabwe Republic Police without loss of benefits or seniority.”

The Application is opposed and the first Respondent has raised points *in limine* as follows:

- (1) The Applicant's Founding Affidavit is not valid because the affidavit in question was deposed to by a person with real, direct and close interest in the matter.
- (2) The Applicant's appeal to the Commission was dismissed in the year 2010 and the application for review was filed on 14<sup>th</sup> September 2011. This period is well in excess of the eight in week period within which the rules stipulate that such applications ought to be filed.
- (3) The Respondent has not only filed the application out of time but has not sought condonation for filing his Review Application out of time, and has attempted to fraudulently to mislead the court by failing to disclose the date the appeal was dismissed.
- (4) The Applicant failed to cite the Commission which he alleges unlawfully upheld his dismissal. Further, and in any event, assuming the court was to grant this application the decision will be rendered *brutum fulmen* as the Commission that made the decision cannot be expected to comply with decisions arrived at in proceedings in which it would not have been cited as a party to.

The background to this review application is as follows:

On the 21<sup>st</sup> November 2009 at around 1400 hours the Applicant and other members of the Zimbabwe Republic Police were conducting patrols in the Mpopoma area of Bulawayo. The Applicant and his colleagues raided a certain house in Mpopoma where they arrested one Amina Phiri and other women for allegedly operating a shebeen. The suspects who were all ladies numbered eleven were taken to Western Commonage Police Station where there were looked up in police cells for "clearance" after the patrols. At the time the suspects were arrested the Applicant and the other officers confiscated crates of liquor which they took to the police station. After about 4 hours the arrested persons were taken from the police cells to the charge office where they were made to pay deposit fines. A complainant was subsequently lodged to the effect that the fines were accepted by Applicant and his colleague but no official receipts had been issued.

Applicant and another member of the force were charged and appeared before a Police Disciplinary Hearing on allegations that they performed their duties in an improper manner in that:

- (a) they did not book or cause to be booked exhibits which they had recovered, namely, the crates of beer.
- (b) they accepted US\$10-00 from Amina Phiri and US\$5-00 from Dorothy Sempeka, respectively but did not issue receipts.
- (c) the alleged Shebeen queen did not pay any fine in respect of selling beer without a licence.

Needless to say the Applicant strenuously denied the allegations and raised various defences pointing out that he was not responsible for receipting fines paid in the charge office. The Applicant's defence was rejected and he was duly convicted by a single officer in terms of section 29 of the Police Act, [Chapter 11:10] as read with section 34 of the said Act on the 3<sup>rd</sup> September 2010. The Applicant lodged an appeal against the decision. The Applicant's Appeal was not successful and on the 20<sup>th</sup> December 2010 a Radio signal was dispatched to the Officer Commanding, Bulawayo advising that Applicant had been discharged from the force as being unsuitable for police duties. There is evidence that on the 22<sup>th</sup> December 2010 Applicant was advised of his discharge in the presence of one Assistant Inspector Khabo and Inspector Ndlovu. The Applicant appended his signature to the Radio signal message on the same date the 22<sup>nd</sup> December 2010.

It is not in dispute that Applicant filed this Application for Review on the 14<sup>th</sup> September 2011. Applicant has not made an Application For Condonation for the Late of filing of the Application for review. Instead, Applicant chose to deceive the court into believing that the signal for his discharge was sent out on the 1<sup>st</sup> August 2011.

It is clear that the discharge of the Applicant was effected by Radio signal on the 22<sup>nd</sup> October 2010. The Applicant acknowledged receipt of the Radio signal.

In the absence of an application for condonation for the late filing of the review the matter is not properly before the court. The Applicant has chosen not be honest with the court and for that reason alone the court will not be inclined to entertain the matter.

It is trite law that when a party seeks condonation he must make such application giving reason for his non-compliance with the rules. The review application should have been filed within (8) eight weeks from the 2<sup>nd</sup> December 2010. This was not done.

See the cases of *Eugene Kondonani Chimpondah and Tidings Chimpondah v Gerald Pasipamire Muvami* HH 81/2007 and *Ehlers vs Standard Chartered Bank of Zimbabwe Ltd* 2000 (1) ZLR 136.

In *casu*, the Applicant has not sought condonation but has deliberately made a conscious decision to mislead the court. The delay in bringing the Application is inordinate and there is no reasonable explanation for delay in filing the review application.

In the circumstances there is no need to consider the other issues raised *in limine*. There will equally be no need to deal with the merits of the case. The application should fail on the first hurdle that there has been no application for condonation made to the court to file the application out of the prescribed time limits. Accordingly, this application is dismissed.