ZORORAI MALASHA

And

PATRICK PETER MATONGO

versus

THE CHAIRMAN OF THE DISPLINARY

COMMITTEE (MR I.N. KAJENGO)

and

SECRETARY FOR HIGHER AND TERTIARY EDUCATION

And

SECRETARY PUBLIC SERVICE COMMISSION

And

DIRECTOR CIVIL DIVISION

HIGH COURT OF ZIMBABWE

HUNGWE J

HARARE, 23 May 2012

**Urgent Chamber Application**

Both applicants in person

*Ms B Kamanga,* for the respondents

HUNGWE J: Applicants seek an order interdicting the first respondent from proceeding with a disciplinary inquiry set down for tomorrow 1 June 2010. There is no specific relief sought against the other respondents. In their founding affidavit deposed by first applicant and supported and approved by the second applicant they make the following averments:-

First respondent has scheduled to be conducted disciplinary hearings in respect to allegations of misconduct preferred against the applicants. It is important to note that they face different charges but have filed a joint application as it is convenient for them to do so.

The first ground upon which they seek that first respondent be interdicted is that the first respondent is hell bent on proceeding with the inquiry without affording the respondents an opportunity to inspect and study the documentary evidence against them as provided in s 4 (2) (b) of the Public Service Regulations Statutory Instrument 1 of 2000.

The second ground upon which it is sought to interdict tomorrow’s hearing is that the disciplinary committee appointed to hear the allegations of misconduct levelled against the members is that the other two members are junior officers in the same department headed by the chairman. As such it will be impossible for the junior officers to freely express their opinions on the matter before the committee. Consequently, the applicant say, there is no guarantee of a fair hearing before this panel.

The respondent, on the other hand, argue that annexure “A” to the applicants’ papers gave them sufficient notice as to where the documentary evidence could be inspected. Because of the nature of the evidence against first applicant (examination receipts), it was not possible to furnish her with the same at the time that the notification of the hearing was given.

In any event, first applicant was verbally advised on 12 April 2010 that she could inspect the documentary evidence which would be relied upon at the hearing at the vice principal’s office. The vice principal was also asked to permit first applicant access to the examination receipts in question. The hearing which was scheduled to begin on that day had to be postponed to accommodate this eventuality.

In respect of the second ground, the respondents stated that s 43 (2) as amended by S.I. 58A/01 provided for the qualification of the members of the committee. As such the incumbent do qualify.

In any event, the respondent argued, the applicant’s fears of bias are unsubstantiated since no one knows what will happen at the hearing. Should any irregularity come to pass the applicant can still approach the appropriate *fora* for redress. There are several remedies available to the applicants such that it cannot be said that interdicting the hearing set for tomorrow is the only remedy available to them.

It seems to me that even accepting that the respondent have failed to comply s 44(2) (b) of S.I. 1/2000, by not availing such further particulars as would assist the applicant in formulating their defences, the solution does not lie in the relief sought.

I say this because at the hearing it emerged that the applicants accept that they were informed of where the evidence could be inspected in order to prepare for trial. For some reason the applicants did not avail themselves of the opportunity that was afforded to them to peruse such evidence and decide whether more time would be required, in view of that evidence, to prepare for the hearing.

In the premises the application is dismissed with costs.

*Civil Division of the Attorney-General’s Office,* legal practitioner for Respondents