CONSTABLE TENJANI AND 30 OTHERS
versus
THE MEMBER IN CHARGE ZRP MBARE MESS N.O
and
THE OFFICER COMMANDING HARARE PROJECTS N.O
and
THE OFFICER COMMANDING HARARE PROVINCE N.O
and
THE COMMISSIONER GENERAL OF POLICE N.O

HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 19 February 2019 & 9 April 2019

Opposed Application

N Mugiya, for the applicants
Ms *C Siqoza*, 1st, 2nd, 3rd & 4th for the respondents

MANGOTA J: I heard this application on 19 February 2019. I delivered an *ex tempore* judgment in which I granted the applicants' prayer.

On 15 March 2019, the respondents addressed a letter to the registrar of this court. They requested full reasons for my decision. These are they.

The applicants are members of the Zimbabwe Republic Police. They reside at the ZRP Mbare mess. The mess provides meals to residents for a fee.

The applicants' bone of contention with those who are in authority over them is that the latter unilaterally deducted $45 from each of their May 2018 salary. They deny that they authorised the respondents to deduct the stated sum from their pay. They complain that the respondents are extorting them without giving them the opportunity to present their case to their superiors. They

aver that they made attempts to engage the first respondent on the matter. They state that he told them that the police could do whatever they wanted with mess residents. They move the court to declare the conduct of the respondents unlawful and to direct them to refund to them the sum which they allegedly unlawfully deducted from their salaries.

The first, second and fourth respondents oppose the application. The third and fifth respondents do not. My assumption is that they intend to abide by my decision.

It is the statement of the respondents that the applicants requested their authorities to have their mess contributions deducted through the fifth respondent. They attach to their opposing papers minutes of the meeting which they say the idea of deductions was discussed with the applicants. They allege that the applicants who did not attend the meeting indicated that they did not have any objection to the deductions being made. They state that, because the applicants are occupying ZRP mess, they are, by virtue of the stated fact, classified as dining-in members in terms of para 15.3 Part 10 of the Police Standing Orders, Volume 1. They aver that the applicants' salaries were subjected to a stop order to cater for the meals which they are consuming at the mess. They state that, by virtue of being dining-in members, the applicants are peremptorily required to be charged monthly for all meals which they eat during the month. They allege that, by conduct, the applicants accepted that they would pay for the meals served on them. They move the court to dismiss the application.

I observe and mention, in passing, that a person's wage or salary is his exclusive right. No one has the right to temper with it without its owner's consent. Where some authority tempers with the salary of a person against his will, the court will, more often than not, lean in his favour if he approaches it for redress. A *fortiori* when the tempering occurs without his knowledge or consent and, more so, when he has not been heard on the same.

It is a sound principle of natural justice for one to hear the other before he does an action which adversely affects the aggrieved person's right. GUBBAY CJ aptly defines the meaning and import of the *audi alteram partem* principle. He does so in *Taylor* v *Minister of Education & Anor*, 1996 (2) ZLR 772 wherein he remarks at p 780 A-C that:

> "The maxim *audi alteram partem* expresses a flexible tenet of natural justice that has resounded through the ages. One is reminded that even God sought and heard Adam's defence before banishing him from the garden of Eden… it prescribes that when a statute empowers a public official or body to give a decision which prejudicially affects a person in his liberty or property or existing rights, he or she has a right to be heard in the ordinary course before the decision is taken."

Seventeen years later, this court made some incisive remarks on the principle which GUBBAY CJ was pleased to make in in *Taylor* v *Minister of Education (supra*). It stated in *Hutchings* v *Johns College*, HH 416/13 that:

> "The *audi alteram partem* rule holds that a man shall not be condemned without being given a chance to be heard in his own defence. The rule requires public officials, judicial and *quasi* – judicial officers, and really anyone entrusted with the power to make decisions or the power to take action *affecting others adversely*, to exercise such powers fairly…" (emphasis added).

The abovementioned judicial pronouncements and many others which have not been cited in this judgment render the respondents' reliance on paras 15.11 and 15.13 of the Police Standing Orders Volume 1 nugatory. Police Standing Orders cannot supersede the Constitution of Zimbabwe Amendment (No. 20) Act, 2013, the Administrative Justice Act [*Chapter 10:26*] and other pieces of legislation which not only flow from the country's constitution but also deal with the rights of people who are within the length and breadth of Zimbabwe. The Standing Orders are, to the extent of their inconsistence with the Constitution of Zimbabwe, invalid and of no force or effect.

The applicants' statement which is to the effect that they were not heard when the deduction of $45 was effected on their May 2018 salary resonates well with the respondents' assertion. The respondents state, in paras 18.1 and 18.2 of their heads of argument, as follows:

> "18.1 The applicants are all residents of ZRP Mbare Mess, which supplies meals to all members of the Police. Police Standing Orders Volume 1 Part 10 para 15.3 state that: where any mess is established for members of a certain rank, all members of that rank on station shall be dining- in members of the mess other than members of the CID or women police officers, unless…..
>
> 18.2 Paragraph 15.11 of the same standing orders states that 'dining- in members of a Police Mess shall be charged monthly for all meals during the month at the rate of three meals per day whether or not such meals were taken by such members" (emphasis added.)

It has already been demonstrated that the respondents' reliance on the abovestated paragraphs of the Police Standing Orders is of no force or effect in terms of the law. They do not find any support in the Constitution of Zimbabwe or in the statute books of this country. They are inconsistent with the constitution and legislation which is subsidiary to the same.

That the respondents' narration of the issue of the deductions is in dribs and drabs requires little, if any, debate. They, for instance, state that the applicants agreed to the deductions being

made on their salaries. They allege that the applicants did so at the meeting which was held at the ZRP Mbare mess on 27 January, 2018. They attach to their opposing papers Annexure A which they say constitutes the minutes of the meeting. The annexure shows that:

(i) only ten (10) of the thirty (30) applicants attended the meeting - and

(ii) the meeting did not ever resolve that deductions for meals taken by mess residents would be effected from the latter's salaries.

The last bullet of paragraph 4 of the minutes is relevant. It reads:

> "mess residents concluded that there (sic) are ready to pay mess fees through SSB and hope that if this occurs, renovations and repairs will be easy since they are living in unclean environment." [emphasis added].

The phrase which reads '*if this occurs'* says it all. It shows that the residents who attended the meeting did not endorse the allegation that payment for the meals which they consumed from the mess would be effected through a garnish. Further, the fact that the ten (10) residents may have stated as alleged does not confer authority on the respondents to make a blanket order which affects those who did not attend the meeting. The ten (10) attendees did not say that they had the authority of the remaining twenty (20) applicants to make a decision which binds the latter.

It is also without any sense for the respondents to suggest that the ten (10) attendees conferred authority upon them to make deductions of $45 from their salaries each and later turned around to accuse them of extorting them of their money. The respondents, in my view, realised that their case stood on nothing. They, therefore, sought to bolster their case by stating that the applicants, as mess residents, are bound by the police standing orders which, as has already been observed, are of no legal force or effect.

The most incomprehensible statement of the respondents is contained the last paragraph of their opposing papers. They state, in the same, as follows:

> "By conduct, the applicants accepted that they would pay the price of the meals served to them hence they cannot claim refund for something they consumed and which they are administratively required to pay."

The respondents do not tell the applicants' conduct which, they say, justifies the unilateral deductions of $45 from their May 2018 salary. They also do not show what each applicant consumed in May, 2018. They make an unsubstantiated statement.

If the deductions were permissible in terms of the Police Standing Orders as the respondents claim, the question which begs the answer is why were the deductions effected for

May 2018 only and not for June, 2018 as well. They are not suggesting that the Police Standing Orders remained operative for May 2018 and not for the months which succeeded that month. A *fortiori* when the applicants remained at the mess in June and July, 2018.

It is trite that Police Standing Orders which remain operative against a person's salary for only one month is characteristic of the respondents' unlawful conduct which they cannot justify. The respondents' high-handedness cannot be allowed to stand. They acted in a very unlawful manner when they deprived the applicants of a portion of their salary without any lawful justification for the same. They arrogated to themselves the power to take from the applicants what they knew they could not take against the applicants' will.

The applicants are not off the mark at all when they move that the respondents' conduct be declared to be unlawful. Their conduct is nothing but that. The conduct remains outside the law.

The respondents deprived the applicants of a portion of their salary for May, 2018. They have no justification at all for acting as they did. Their conduct is unlawful.

The applicants proved their case on a balance of probabilities. The application is, in the premise, granted as prayed.

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